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Vol. III

TRANSCRIPT OF RECORD

(Pages 1647 to 2334)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 343

STATE OF NEW YORK, STATE OF DELAWARE, STATE OF INDIANA, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, STATE OF ALABAMA, ET AL.

No. 344

STATE OF MAINE, STATE OF NEW HAMPSHIRE, STATE OF VERMONT, ET AL., APPELLANTS,

vs.

THE UNITED STATES, OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 345

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ERNEST S. HOBBS was sworn and testified as follows:

Direct examination.

By Mr. Smelker:

Q. Will you please state your full name.
A. Ernest S. Hobbs.
Q. What is your present occupation?
A. Statistical analyst, Interstate Commerce Commission.
Q. How long have you been so employed?
A. Since 1929.
Q. State briefly the extent of your education.
A. I was graduated from Northwestern University, having taken courses in economics and courses in transportation economics.

[fol. 188] Mr. Smelker: You had better talk a little louder, Mr. Hobbs.

By Mr. Smelker:

Q. State briefly the extent of your experience as a statistical analyst.
A. My duties as analyst consist of analyzing cost data and other data and exhibits presented in various cases before the commission, preparing cost studies and preparing special studies relating to production and railway traffic.
Q. Have you made a study of the progression in freight rate mileage scales?
A. I have.
Q. Of what did that study consist?
A. This study consists of a survey of the rate scales prescribed and published by the Interstate Commerce Commission in mileage scale form with a view of determining the relative progression.
Q. Have you set up the results of that study in exhibit form?
A. I have.

Mr. Smelker: If the Commissioners please, I now offer for identification the exhibit which has just been described by the witness.

Com. Aitchison: It may be identified as exhibit 5.

(Exhibit No. 5, Witness Hobbs, marked for identification.)

By Mr. Smelker:

Q. Are the sources of your material shown in the text of the exhibit, Mr. Hobbs?

A. Yes, sir.

[fol. 189] Q. What is the purpose of the exhibit?

A. The purpose of the exhibit is to develop the average or typical rate of progression in the various freight rate mileage scales for both class rate and commodity traffic prescribed and published by the Commission in its reports. This study is not concerned directly with the level of the freight rates but with the rate of change in the freight rate in one mileage block over the freight rate in the next lower mileage block of a given scale. The rate of change is expressed as the per cent of increase. Regardless of the general level of the rate scale being investigated, rates of changes were obtained which could be compared and combined with the corresponding rates of change in other scales to obtain a composite progression. The resulting progression obtained is not to be regarded as necessarily ideal. The first composite result obtained was irregular in progression, as might be expected from the combination of a large number of unrelated scales, consequently the sections of the composite scale where irregularity appeared were smoothed out with a minimum disturbance to the characteristic progression in evidence. This adjustment was somewhat minor in character and may be regarded as merely incidental to the study. No external considerations, such as a progression consistent with cost, value of the service to the shipper, competition, and what the traffic would bear, entered into the composition of the progression finally obtained except as they were reflected in the original [fol. 190] scales. No attempt was made to weight the progression in the various scales by the volume of traffic moving thereunder. It would have been impracticable to secure data fully representative of the given scales. These scales are territorial in scope rather than national, and obviously as they are limited to interstate scales, intrastate scales are not represented, which would account for a considerable proportion of the total commodity and class rate traffic. The scales considered in the study are not exhaustive of all the mileage scales applicable to interstate traffic as some scales are initially published by the roads themselves. Any system of weighting would, therefore, have

been partial in extent. It is pertinent to observe that the scales selected serve to give a cross section of the rate structures in the several rate territories. They are typical of the prevailing freight rate scale progression to the extent that they represent a fair sampling of the rate structure in effect. Reference to the tables on pages 8, 9 and 10 of the exhibit indicates that the relative progression in the class rate scales at 100 miles, based on 100-mile blocks, is highest in Southern territory, 127 per cent, and lowest in Eastern territory, 87.9 per cent. These percentages are based on the initial rate at 5 miles. At 300 miles the rate of progression is about the same, 20.0 per cent in the east, and 19.6 in the south, but at 400 miles there is a divergence. [fol. 191] and the per cent of increase becomes 13.5 in the east, and 16.4 per cent in the south. At 500 miles and beyond, the rate of progression is less in the south than in the east except at 800 miles. In Western Trunk Line Zones 1 and 2, the relative progression is higher than in the east except that in Zone 1 at 800, 1000 and 1400 miles, it is less, and in Zone 2, at 1400 miles it is less. In the Southwestern Zone 3 scale, the progression is higher than in the Eastern scale except at 300, 1000 and 1300 miles. At 1500 miles, the highest progression is found in Western Trunk Line Zone 1, 5.4 per cent, and the lowest in the South, 4.7 per cent. While uniformity in the rate of progression in the several territorial class rate scales would be ideal, the factors that enter into the construction of the scales are necessarily different territorially and require adjustment to the local needs of commerce, transportation costs, competition, and so forth, that are peculiar to a given territory. It would appear, however, that a given scale should possess a regular, smooth progression without abrupt changes in the rate of progression, especially at the greater distances. In the absence of a specific rule for projecting the freight rates through the entire scale of distances involved, the composite scale of progression should be useful as a systematic guide to what is conventional in the field of freight rate scale progression.

Q. Do you have any further comment to make on exhibit 5, Mr. Hobbs?

[fol. 192] A. That is all I have.

Mr. Smelker: If the Commissioners please, we now offer in evidence exhibit No. 5.

Com. Aitchison: Is there any objection to the receipt in evidence of exhibit 5? (No response.) Without objection, it is received.

(Exhibit No. 5, Witness Hobbs, received in evidence.)

Com. Aitchison: Before cross examination begins, I would like to ask you this:

By Com. Aitchison:

Q. On page 14, the second paragraph, line 4, "a" is usually a minus quantity, is it not?

A. It could be, yes, sir.

Com. Aitchison: You may cross examine.

Mr. Dana T. Smith: Respondents have no cross examination on this exhibit.

Com. Aitchison: Do any other parties desire to cross examine?

Mr. Wagner: Yes, Mr. Commissioner.

Com. Aitchison: Mr. Wagner. For whom are you appearing?

Mr. Wagner: The Southern Governors Rate Conference.

By Mr. Wagner:

Q. Mr. Hobbs, up to what date did you actually cover by this exhibit?

A. This exhibit was not prepared especially for this case. It was prepared for the Annual Publication last August.

Q. Does it purport to carry scales available up to that [fol. 193] time, generally speaking?

Com. Aitchison: It is all set up on page 1 of the exhibit.

By Mr. Wagner:

Q. Does your exhibit show the 17000 Part 9 livestock rates that were prescribed by the Commission in the entire western district?

A. There is one scale on page 26; in 171 I. C. C. 753, that reflects the Docket 17000 adjustment, I think.

Q. That was the southern 17000 Part 9 scale, was it not?

A. Yes.

Q. I am asking about the western district.

A. Oh, western.

Q. Yes.

A. Your western is not included in there. I have made a calculation to show what the effect of substituting that adjustment for particular scales given for livestock in western territory would be, and turning to page 20, in the second column, showing the actual average per cent of next lower rate, at 100 miles in place of 205.22, I obtained 204.3. At 200 miles, in place of 138.03, I obtained 137.9. Beyond 200 miles, carrying out the computations to one decimal point, there was no change more than one-tenth of one per cent.

Q. Most of the livestock scales in the west, set forth in your exhibit, were substituted by the 17000 Part 1 scale?

A. Yes. I made that substitution.

[fol. 194] Q. Was there any particular reason in using in your class rates 3 of the Western Trunk Line Zone scales and not the 4th, or not including the New Englans Scales in the east, for instance?

A. I omitted the minor rate territory scales, believing we should not give too much weight to their progression. However, I have made computations showing their inclusion, New England Zone A and Zone B, Michigan Zone C, Southern, Western Trunk Line Zone 1 and Zone 2, Southwestern Zone 3 and Zone 4. I have available those exhibits, Mr. Chairman, if you desire to permit them to go into the record.

Com. Aitchison: You might let Mr. Wagner examine them and see if they make enough difference, so as to determine whether it is worth while to put them in or not.

Mr. Wagner: Perhaps the witness can indicate in a word whether or not it affects the progression as he——

Com. Aitchison: There is no point in going to the 4th decimal place in this.

By Mr. Wagner:

Q. Does it make an appreciable change?

A. Well, it makes a considerable change in the shorter distances, but not, of course, for the longer distances.

Com. Aitchison: You had better put it in, then.

Mr. Smelker: If the Commissioner please, we offer for identification as exhibit No. 6, a corrected table that has just been described by the witness.

Com. Aitchison: It may be identified as exhibit 6.

[fol. 195] (Exhibit No. 6, Witness Hobbs, marked for identification.)

Q. Mr. Hobbs, in your exhibit No. 6 you have included all of the class rate scales I referred to and Zone 4, also?

A. Yes, sir.

Mr. Wagner: No other questions.

Mr. Smelker: We offer in evidence at this time, if the Commissioner please, exhibit No. 6.

Com. Aitchison: Is there any objection to the receipt in evidence of exhibit 6? (No response.) Without objection, it is received.

(Exhibit No. 6, Witness Hobbs, received in evidence.)

By Com. Aitchison:

Q. Mr. Hobbs, I notice you have a straight line progression of your corrected scale from 300 miles to 600 miles, is that correct?

A. I did not understand your question. I am sorry.

Q. You have a straight line progression there?

A. A straight line progression, yes.

Q. Yes.

A. That is right.

Q. You have another straight line progression for 200 miles?

A. That is right.

Q. Then a progression for 200 miles at a somewhat higher rate. Your first difference is 18 cents instead of 17?

A. Yes.

[fol. 196] Q. Then you go back to a 17-cent progression?

A. Yes.

Q. So you virtually have a 17-cent progression from 700 miles to 1200 miles?

A. Yes.

Q. Is that correct?

A. Yes, sir.

Q. From 1200 on the progression is a tapering progression?

A. That is right.

Q. You could not fit any parabolic curve to that, could you?

A. I beg your pardon?

Q. You could not fit any parabolic curve to that, could you?

A. No.

Q. Have you any explanation of the abnormality which appears at 900 miles in the average of the actual rates in cents per hundred pounds?

A. No, sir. I have not been able to find the explanation for that.

Q. Have you checked that with care?

A. I beg your pardon?

Q. Have you checked that with care?

A. With the carriers?

Q. No. With care.

A. Yes. It was checked with care, yes.

Q. Is it possible it might be due to the fact that some one [fol. 197] of the lower rated scales ran out at 800 miles?

A. Yes, That is possible, on account of the shorter scale, yes. Not all of them run out at 1500 miles. The New England scales are limited to about 600, I believe.

Com. Aitchison: Well, there is certainly something which calls for explanation as to why the Commission should prescribe a 26-cent increase from 800 to 900 miles with an average of a 15-cent increase for the 100-mile blocks on either side of it.

The Witness: Of course, the Commision did not prescribe this composite scale.

Com. Aitchison: Look further and see if you cannot later find an explanation of the abnormality.

By Com. Aitchison:

Q. That abnormality reflects itself in what I called your attention to, that is, your jump from 17 cents as a first difference, to 18 cents, does it not?

A. Yes, sir.

Q. It is possible to equate out the abnormal 26-cent first difference, 900 miles over 800 miles and still further rectify the scale shown in the right-hand column, is that right?

A. Yes, sir.

Com. Aitchison: Is there any further cross examination of this witness?

Mr. Hollopeter: I have one or two questions, Mr. Commissioner.

Com. Aitchison: Mr. Hollopeter.

[fol. 198] By Mr. Hollopeter:

Q. Mr. Hobbs, in your analyzation or analysis of these scales, you did not break your analysis at the same point or same distance at which the scales themselves break in their rate of progresion, did you?

A. I took the per cent of increase for each 100-mile interval, for all of these various scales.

Q. Yes.

A. I then combined those and divided them by the number of scales included in the column, so that I obtained an average per cent increase for that particular distance.

Com. Alldredge: Why not ask him if he began his progression at a base of 100 miles?

Mr. Hollopeter: I believe that is fair.

By Mr. Hollopeter:

Q. You began your progression at a base of 100 miles, did you not?

A. That is right.

Q. Now, some of these scales at least change their rate of progression around 80 miles and they carry the same rate of progression over the 100-mile block. How much different results would you get, do you think, if you had analyzed these scales under the rate of progression at the exact point at which they break their rate of progression?

A. I am unable to say. I am unable to say what difference that would make.

Q. Do you not think you would have gotten a more [fol. 199] uniform showing or result, perhaps, or might have had the same increase on increment rather than getting a higher increment for some of the longer blocks than the shorter blocks?

A. That is possible, yes.

Com. Aitchison: Now, the crowning insult in medieval dialectics was to deny the other fellow's major premise. Mr. Hollopeter has to show me any scale that the Commission ever made of class rates which did not break on 100 miles and which carried the block over it.

Mr. Hollopeter: It is my understanding that the Eastern Class Rate Scale breaks at 80 miles.

Com. Aitchison: It breaks at 80 miles and it breaks at 100 miles. I am referring to the first class rate as prescribed in 164, I think it was, I. C. C., 56 cents at 100 miles.

Mr. Hollopeter: If I may, I would like to make myself clear on that. I am referring to the mileage blocks which start at 5 miles per block and run up to a certain distance. Then the mileage block increases and the increase in cents for each block decreases. Now, my recollection is that the Eastern Class Rate Scale makes that change around 80 miles, and again around 260 miles, so that these changes do not occur at the 100-mile blocks which have been used in this analysis. I was asking if that would make any difference in the result.

Com. Aitchison: It would in the scale and in the individual blocks within the 100 miles, but it would not make [fol. 200] a bit of difference at the 100 miles.

By Com. Aitchison:

Q. Is that right, Mr. Hobbs?

A. Yes, sir.

Mr. Hollopeter: I think that brings out the particular point I had in mind. We can analyze it a little more thoroughly, I think.

By Com. Aitchison:

Q. Mr. Hobbs, you can get rid of this abnormality I mentioned, which appears on exhibit No. 6, where you have a 7.6 per cent increase at 800 miles and 12.2 at 900 miles, then 6.3 at 1000 miles and 5.9 at 1100 miles by just simply interpolating a per cent there at 900 miles which will scale in with what is before and after it, can you not?

A. I believe that is true.

Q. Either that, or suppose you had worked this on the basis of leaving out the odd numbered hundreds of miles. You would have come to virtually that end, would you not?

A. Yes, sir.

Q. But in that case you would not have this disturbing element of the abnormal first difference at 900 miles?

A. Yes, sir.

Q. That would be cleared up?

A. Yes.

Com. Aitchison: Are there any other questions of this witness?

Mr. Wagner: Following one of your questions, I would [fol. 201] like to ask the witness one question to clarify it.

By Mr. Wagner:

Q. Do the New England scales end at 800 miles?

A. That is my recollection.

Q. By accumulating your various rates at 800 miles and dividing you get a lower average at 800 miles than your next 900-mile average of the higher Western Trunk Line zones and that would make your hump?

A. The averages of the rates themselves?

Q. The averages of the rates themselves, yes.

A. I did not do it that way. I did it by per cent increase in the freight rates and divided the per cent of increase.

Q. I am referring to the figure 26 in your increase in the third column.

A. I put those in just for information.

Q. That is where that 26 would come from?

A. That is right.

By Com. Aitchison:

Q. This exhibit No. 6 compares with what page of your exhibit No. 5?

A. Page 18. Page 18 and page 19.

Q. Well, in as much as on pages 18 and 19 in your composite first class freight rate scale you do not have this abnormality at 900 miles in the shape of a first difference——

A. No.

Q. —it is evident, is it not, that the inclusion of the New England scale and zone 4 scale are responsible for the hump?

[fol. 202] A. That is right.

Q. This exhibit 6, however, to be considered, should be treated as substituted for the tables on pages 18 and 19 of your exhibit No. 5?

A. Well, that is an alternative.

Q. In the alternative?

A. Yes.

Com. Aitchison: Very well. Are there any other questions of this witness? (No response.) If not, you are excused.

(Witness excused.)

Com. Aitchison: We will suspend until 9:30 tomorrow morning.

(At 5 o'clock P. M., July 10, 1941, recessed to 9:30 A. M., July 11, 1941.)

[fol. 203] Hotel Statler, St. Louis, Missouri, July 11, 1941.

Met pursuant to adjournment at 9:30 A. M.

Before: Division 2 of the Commission, Hon. Clyde B. Aitchison, Hon. Walter M. W. Splawn, Hon. J. Haden Alldredge.

Present: Paul O. Carter, Examiner; W. J. Koebel, Examiner; Mr. John J. Murphy, South Dakota; Mr. George McConnaughy, Ohio; and Mr. W. H. Scott, South Carolina, comprising a Cooperating Committee of State Commissions.

Appearances: As heretofore noted.

PROCEEDINGS

Com. Aitchison: Come to order, please.

Mr. Smelker: I will recall Dr. Edwards, please.

FORD K. EDWARDS, recalled, previously sworn, testified further as follows:

Direct examination.

By Mr. Smelker:

Q. Dr. Edwards, yesterday there was one question left for clarification concerning 5 railroads mentioned on page 65 of your exhibit No. 2. Are you now ready to make that clarification?

A. Yes, sir.

Q. Please proceed to do so.

[fol. 204] A. Referring to page 65 of exhibit No. 2, I was requested to name the 5 railroads that were used in applying certain distributions to those carriers which were unable to give us the desired information. This distribution based on 5 carriers was only used for the purpose of computing the non-revenue gross ton miles. For the New England territory, for the distribution of non-revenue freight by classes of equipment, we used the New York, New Haven & Hartford, the Boston & Albany, the Boston & Maine, the Central of Vermont, and the Bangor & Aroostook. For Eastern territory we used the New York Central, the Erie, the Baltimore & Ohio, the Lehigh Valley and the Delaware & Hudson. For the Southwestern territory we used the Missouri Pacific, the Missouri-Kansas-Texas, the Frisco and the St. Louis-Southwestern. For Western Trunk Line and Mountain Pacific territory we used the Chicago and North Western, the Chicago Great Western, the Chicago, Burlington & Quincy, the Chicago, Milwaukee, St. Paul & Pacific and the Chicago, Rock Island & Pacific.

By Com. Aitchison:

Q. You did not touch up the Mountain Pacific area very much with that combination, did you?

A. Pardon me?

Q. You did not touch up the Mountain Pacific territory with that combination.

A. Well, the last combination of Western Trunk Line and Mountain Pacific territory is based on those five roads, [fol. 205] and the only roads that filed reports were the Great Northern Railway and the Northern Pacific Railway. I find on examing our formulas, that those roads initially indicated they could not provide the desired information. However, we wrote back to them and asked these two railroads if they would supply that information on the basis of a test. Subsequently, after some period of time, the answers came in, whereupon we reworked the formulas for those two railroads and did not use any of these averages for Western Trunk Line or Mountain Pacific territory. Now, if desired, I would like to point out that we did not use the same 5 railroads for the computation of the tare weight of equipment referred to on the bottom of page 66, for the reason that certain of those roads were deficient on certain information; and we had to bring in another road, and drop one road, or in some cases we

used 6 roads. If it is felt desirable, I can give the roads that were used for those further computations.

Com. Aitchison: You had better put them in. Somebody will ask for them.

The Witness: The tare weight of equipment for New England territory was based upon the same 5 railroads above referred to in obtaining the distribution of non-revenue freight by classes of equipment. The tare weight for the Eastern territory was based upon the Pennsylvania Railroad, the New York Central, the Erie, the Baltimore & Ohio, the Lehigh Valley and the Delaware & Hudson. For the Southern territory, we used the Southern Railway, the [fol. 206] Louisville & Nashville, the Atlantic Coast Line, the Seaboard Airline, the Florida East Coast and the Central of Georgia. For the Western Trunk Line territory we used the Chicago and North Western, the Chicago Great Western, the Chicago, Burlington & Quincy, the Chicago, Milwaukee, St. Paul & Pacific, and the Chicago, Rock Island & Pacific. For the Southwestern roads we used the Missouri Pacific, the Missouri-Kansas-Texas, the Frisco, the St. Louis-Southwestern, and the Texas & New Orleans. On page 67 we refer to the development of the ratio of empty to loaded car miles. For the New England roads we used the New York, New Haven & Hartford, the Boston & Maine, the Central of Vermont, the Maine Central and the Bangor & Aroostook. For Eastern territory we used the Pennsylvania Railroad, the Baltimore & Ohio, the Erie, the Delaware & Hudson and the Lehigh Valley. For the Southwestern roads, we used the Missouri Pacific, the Missouri-Kansas-Texas, the Frisco and the Kansas City Southern. For the Western Trunk Line and Mountain Pacific territory we used the Chicago and North Western, the Atchison, Topeka & Santa Fe, the Chicago, Milwaukee, St. Paul & Pacific, and the Chicago, Burlington & Quincy. In the latter two cases there are only four roads named. We had included originally in our averages the Chicago, Rock Island & Pacific. However, I find that for some reason we deleted the figure for the Chicgo, Rock Island & Pacific. I do not at this moment recall the reason why we did that.

[fol. 207] By Mr. Smelker:

Q. Have you any other comments to make on your exhibits before you conclude, Doctor?

A. Yes. Mr. McCollester raised the question as to what would be the effect if the R. F. & P.—the Richmond, Fredericksburg & Potomac—were included in Eastern territory in lieu of Southern territory as we did in the development of the cost scales. I find that the total operating expenses, rents and taxes of all the R. F. & P. constituted 1.2 per cent of the total territorial cost in Southern territory. I also find, with respect to the unit costs for our various groups, as to some units the R. F. & P. unit costs are higher than the territorial average and in some cases they are lower. However, as to the principal items they are lower; possibly the measure might be around 25 per cent for all items, taken as a whole. To carry through the computations would require some work and a calculating machine that was not available, but that is a reasonable estimate. Now, if the R. F. & P. total operating expenses, rents and taxes constitute only 1.2 per cent of the total expenses of the south, and the unit costs are approximately 25 per cent lower than the unit costs for the south, the average unit cost for the south, the elimination of the R. F. & P. from Southern territory would probably affect the unit cost for the Southern territory by 25 per cent of 1.2 per cent, or roughly about three-tenths of one per cent. On the other hand, the R. F. & P. total operating expenses, [fol. 208] rents and taxes constitute approximately three-tenths of one per cent of the total operating expenses, rents and taxes of the railroads included in territory No. 2, which is the Eastern territory, excluding New England and northern Illinois. If we follow the same computation, the effect of including the R. F. & P. would be to lower the cost shown for the Eastern territory by no less than one-tenth of one per cent. Those adjustments would not affect the territorial averages to any significant extent.

Q. Have you anything further?

A. Pardon me?

Q. Have you anything further?

A. Yes. Mr. Turney raised the question as to the treatment of the station clerical expenses on less than carload. He raised the point that the formula provided for the treatment of the cost on an average per ton basis

and did not reflect the costs for different weight shipments. He is correct in that respect. We separated the clerical station costs between carload traffic and less than carload traffic on a weighted consignment basis to obtain what we felt was the proper expense chargeable against less than carload traffic. Having done that, we then took the total cost and divided it by the total tons. The result is that we have included in our less than carload cost the average cost, based upon—that is, the average cost per ton based upon the average number of consignments per ton. If, for example, the less than carload consignments aver- [fol. 209] aged six or seven hundred pounds each, that would mean that you would have approximately three consignments per ton, dividing six or seven hundred pounds into 2,000 pounds. That would mean that on the average ton we would allow for probably three consignments. The amount we actually did allow would depend upon the average consignment per ton for the territory. We believe that the procedure is proper, providing the Commission is interested in setting up a single class rate scale for less than carload traffic without a breakdown by weight brackets. However, if the Commission should desire and find it necessary to break down the less than carload rate structure by weight brackets, such as from zero to 200 pounds, 200 pounds to 2,000 pounds, and so forth, this procedure indicated by Mr. Turney would be necessary and desirable. The average cost for less than carload consignments we might assume to be 20 cents. In case we had a 100-pound weight bracket, the cost per hundred pounds for less than carload station expense would be 20 cents. On a 2,000-pound less than carload shipment, the cost would be one-tenth of that, or 2 cents per hundred pounds. That is a very simple computation that can be made if the Commission so desires. The question was also raised as to the number of railroads that failed to provide us with a breakdown of their locomotive repair expenses by classes of equipment. I refer only to those railroads whose operations were separated between territories. I indicated that about half of the railroads did not do so. I find it was only [fol. 210] about one-third of the roads that failed to give us the information. In fact, I find that only 5 railroads failed to give us the information, in which case we used the apportionment factor that the formula provides for

distributing locomotive repair and depreciation expenses, 60 per cent on the basis of locomotive ton miles, and 40 per cent on the basis of locomotive miles. Now, there is one more point I would like to cover. The question has been raised as to the accuracy of the study and the need for access to the working papers to verify our computations. Of course, personally it is absolutely immaterial to me whether the parties have access to our working papers or not. They will stand on their own feet and all processes are clearly defined. It makes no difference to us whether they are made available or not. However, in so far as the apportionments are concerned, they are all self-contained in the formula. This formula was worked by a group of clerks and analysts who had never seen a cost formula in their life before, and they simply followed the instructions that appear in the formula itself. As to the accuracy of the computations, of course, the blank form will not cover that. However, the formula provides for two controls. Halfway through the formula in schedule E, sheet 1, when we have completed our computations by primary accounts, we provide for a control wherein we take the total amounts and check back against the annual report. We have a similar control at the application of the formula. In [fol. 211] schedule 8, after all apportionments by groups of expenses have been made, and there only remains the computation of the cost scales, we again cumulate all of the figures and again check them back, or provide for a checkback against the annual report. That check and verification was made by individual roads, by territories and for the United States as a whole. I do not recall what the checks were by territories, but for the United States as a whole, after all the apportionments had been made, we checked back within one-twentieth of one per cent of the total expenses that the carriers reported for that year. I might also indicate that all computations were verified independently by two operators, or by two analysts, I should say. The people who worked on this were the regular employees of the Annual Report Section of the Bureau of Statistics. They are the employees who check all annual reports, and take it up with the carrier where inaccuracies appear. They are parties who are familiar with all statistics and with annual reports. As a further check, for our own interest, we also reasoned that we could work the whole study backwards. In other words, if we took all

the commodity movements for the year 1939 for 157 commodities and assigned those commodities to classes of equipment as indicated in the formula, taking each movement in connection with the cost scales, using cost level 2, that we should be able to cumulate the carriers' operating expenses for each commodity and aggregating them together, we should come back to the total amount, that [fol. 212] is, independently come back to the total amount the carriers reported for 1939. We made that check by commodities, carload and less than carload, and our aggregate amount so obtained was 1.1 per cent less than the total expenses the carriers reported in their annual reports for the year.

Mr. Plunkett: May I ask one question at this point, please?

The Witness: Yes.

By Mr. Plunkett:

Q. How did you know the average haul by commodities?

A. The average haul by commodities in that case, and that was the weakness of the study, if you might want to call it that, was obtained from the Coordinator's study. That was the only case in which we made reference to any Coordinator's data. We have not introduced it as an exhibit, but referred to it. However, since the question of accuracy was brought up, I put this statement in for what it was worth.

Mr. Plunkett: That is all.

By Mr. Smelker:

Q. Have you any other comments to make, Dr. Edwards?

A. I think not.

Com. Aitchison: Are there any other questions of this witness? (No response.) You may step aside.

(Witness excused.)

Mr. Smelker: I will recall Mr. Hobbs.

Mr. McCollester: May I say, if the Commissioner please, [fol. 213] I have cited the R. F. & P. simply as illustrative of the necessity of having access to the individual railroad figures, because among other things we will probably want

to challenge the grouping of the railroads and the use of territorial averages, which Dr. Edwards has worked out. We may very well want to show you that those territorial averages have no relation to the issues in this proceeding and that some other grouping may be desirable. I have cited the R. F. & P. simply as one illustration of that.

Com. Aitchison: Of course, your citing it as an illustration does not establish the fact that there are other railroads like it.

Mr. McCollester: No. That is why we want access to the individual figures.

Com. Aitchison: I never understood the rule to be that an expert who was giving his best judgment was compelled to submit everything he had ever read that entered into the making up of his judgment to the best of his ability.

Mr. McCollester: No, Mr. Commissioner, but as I see the situation here, it is this: as I understand the law, the Commission may not base a decision upon data in its files not made part of the record and available to the parties. Now, should it so happen——

Com. Aitchison: We do not intend to do that. We put a witness on the stand who is just a human being witness, as [fol. 214] Justice Pierce Butler once said about Director Prouty. He is here for examination just exactly as if he was called by the state of New York, or one of these respondents.

Mr. McCollester: Exactly so, and he is subject to exactly the same limitations, which are that if he has drawn a conclusion from basic data, the basic data must be either made part of the record or must be made available to the parties. I do not ask that it be made part of the record here. It may be that later we will want to introduce some of it. But we certainly have the right to have access to it otherwise. You have this situation, as I see it, or will have it; the Commission will in the long run—suppose it should prescribe class rates in the ratio of these average territorial costs shown by Witness Edwards. You will have the Commission in effect making a decision, while doing it in the form of reliance upon opinion testimony of the witness, actually doing it upon the basis of data in its files which it has secured by the questionnaire method, which is available to it and not to the parties who may be affected.

Com. Aitchison: The Commission will make no use of any information of that character. We are very well

acquainted, extremely well acquainted with what occurred in the North Dakota Lignite Case.

Mr. McCollester: I know you are, sir.

Com. Aitchison: And we have been publicly criticized [fol. 215] for our adherence to those principles.

Mr. McCollester: It seems to me, Mr. Commissioner, that the same result for which you were criticized in that case will follow if you base a decision on an opinion of a witness which is predicated upon data which the parties are forbidden to see.

Com. Aitchison: You do not have to have every corpse that has ever been dissected by a medical student produced for examination in order to qualify a doctor's opinion. Proceed.

Ernest S. Hobbs recalled, previously sworn, testified further as follows:

Direct Examination.

By Mr. Smelker:

Q. Mr. Hobbs, yesterday you were instructed to prepare a clarification of your exhibit No. 6 in connection with the 900-mile block shown in column 1 as to the increase shown in column 3 of 15 for 800 miles, 26 for 900 miles, and then 15 for 1,200 miles—or rather, 15 for 1,000 miles. Have you any explanation of that at this time?

A. Yes, I have. The increase of 26 on exhibit 6, shown against the 900 miles in the third column, which resulted in a per cent of increase of 12.2 as compared with 7.6 per cent for 800 miles and 6.3 per cent for 1,000 miles, indicates an irregularity that was not apparent, or was not explained on its face. This irregularity results from the fact of the inclusion of the scales for New England Zone A and New England Zone B, carrying with them a much lower rate of progression than the other scales. For instance, the Eastern scale had a rate of increase of 7.4 per cent at 800 [fol. 216] miles. The Southern scale an increase of 7.8 per cent. The Western Trunk Line Zone 2 scale, an increase of 7.7 per cent. The Southwestern Zone 3, an increase of 7.8 per cent. The situation is that the major rate scales were protected at a much higher rate of increase, whereas, the New England scales introduced afterwards, carried a much lower rate of increase. This information

was inserted in exhibit No. 6 and cannot be compared with anything in exhibit No. 5, as corresponding per cents were not shown in the exhibit. Beyond 800 miles, the New England Zone A scale and the New England Zone B scale were discontinued and hence there was a reversion to the progression in the other scales which was much higher.

Q. Is that all?

A. Yes, sir.

By Com. Aitchison:

Q. I wonder if you could not have gotten that out by the use of moving averages after you had gotten your basic data together, including these two New England scales?

A. Moving averages?

Q. Yes.

A. That would have been possible, yes, sir. However, I tried to make it as simple as possible by just using per cents of increase and combining them.

Q. Do you mind stating for the record what the formula would be, approximately, on the basis shown in the first [fol. 217] paragraph of page 14?

A. You refer to the actual figures?

Q. Yes. Put the actual figures in, subject, of course, to check.

A. I do not believe I have the results with me at this time.

Q. All right. But, having obtained your scale as you have by applying the formula shown at the top of page 14, you would be able to smooth these out?

A. Yes. That would give a very close fit to the actual data and could be applied with any given distance to obtain the rates.

Q. It would permit scaling in of intermediate points as well?

A. I beg your pardon?

Q. It would permit scaling in of intermediate points as well?

A. (No answer.)

Q. In other words, the use of the formula at the top of page 14 applied to the final column of sheet 6 would permit a scaling at points intermediate to the 100-mile steps which you have?

A. Yes, sir.

Com. Aitchison: I can quote the formula. The rate is equal to 14.02 times the square root of the miles plus 795 minus 344. Are there any other questions of this witness? (No response.) You may stand aside.

(Witness excused.)

Com. Aitchison: Call your next witness.
Mr. Smelker: Call Mr. Jensen.
Com. Aitchison: Be sworn, please, Mr. Jensen.

[fol. 218] C. G. JENSEN was sworn and testified as follows:

Direct examination.

By Mr. Smelker:

Q. Will you state your full name, please.
A. C. G. Jensen.
Q. What is your present occupation?
A. I am now and have been for a good many years a specialist on the staff of the Commission with reference to freight classification matters. I have other duties also, but that is my principal work.
Q. Will you review briefly the nature of your employment with the Commission.
A. Well, my present title is assistant to the Director of the Bureau of Traffic. That has been my designation for the past eight or nine years. Prior to that I was classification agent for about an equal length of time. My work during all of that period of time was, as I have stated, classification work chiefly.
Q. Have you made a study of the present structure of rail class rates in the country and of the classification governing those rates?
A. Yes, sir.
Q. In doing so, you have become familiar with that subject?
A. Yes, sir; reasonably so.
Q. Have you ever testified as a rate or classification expert before a court or other judicial body?
[fol. 219] A. Several times in the United States Court of Claims only.
Q. Were your qualifications as an expert accepted by the court?
A. Yes. They seemed to be.

Q. Have you prepared a pamphlet containing certain suggestions for improvements in rail class rates?

A. I have.

Q. Are the conclusions of fact and opinions expressed therein your own?

A. Yes, sir. They are only my own.

By Com. Aitchison:

Q. Just to clear that up a little further, what instructions were you given by the Commission when you began this study, and what were your instructions while you were following this through?

A. My instructions, as I understood them, were to prepare a paper dealing with suggestions for improvements in railroad class rates.

Q. The Commission gave you no instructions whatever or intimations as to what kind of a report it wanted?

A. Oh, no. No. There were no instructions as to what conclusions I should reach, of course.

Mr. Smelker: If the Commissioners please, we now offer for identification the pamphlet which the witness has just referred to. We offer it as exhibit 7.

Com. Aitchison: It may be marked for identification as exhibit 7.

(Exhibit No. 7, Witness Jensen, marked for identification.)

[fol. 220] By Mr. Smelker:

Q. What can you say, Mr. Jensen, as to the factual sources used in the preparation of exhibit No. 7?

A. Where I have drawn on sources other than my general knowledge, I believe I have in each case indicated the source. I used certain statistics as to traffic density in the southern states compiled by the Commission's Bureau of Statistics. That is true also of the Federal Census of the population and manufacturing. In addition, I drew rather heavily on a report made by the Association of American Railroads covering less than carload traffic moving throughout the country in a certain week in September, 1939. That report has been represented to me as accurate and I have no reason to believe that it is otherwise. I cannot, of course, testify of my own knowledge that it is.

Q. Do you believe that the conclusions you have reached and the opinions you have expressed would be different if based upon a more extensive investigation of the class rate structure of the country?

A. Yes, sir, I do. If all of the material facts were developed, it is reasonably certain that my conclusions would be somewhat different, and they might be quite different. I do not know whether it is proper at this point, or not, to say that while I cannot be certain, of course, I rather think that if all of the necessary facts were developed, they would show the need for a greater reduction in the first class rates in [fol. 221] the south and the west than I have suggested in this paper.

Q. Is there anything further you wish to say with reference to the exhibit, with respect to errors that might have occurred?

A. Nothing except to call attention to a few minor errors, if this is the correct time to do that.

Q. Yes.

A. On page 1, line 1, the date "1931" appears where it should be "1928".

Mr. McCollester: 1928?

The Witness: That is right. On page 7, and again on page 14, the statement is made that the first class rate from New York to the first station in Iowa west of Dubuque is $2.04. Actually the rate is $1.96.

Com. Aitchison: Let us be certain that you make it clear for the record.

By Com. Aitchison:

Q. Page 7 you were referring to?

A. Yes, sir. I think it is page 7 and page 14.

Q. What line number?

A. Line 9.

Mr. Smelker: Line 9.

By Com. Aitchison:

Q. What should the figure be instead of $2.04?

A. It should be $1.96.

Q. Instead of $2.04?

A. Yes.

[fol. 222] Q. What is the other page?

A. Page 14, the 4th line from the bottom.

Q. The same correction?

A. Yes, sir.

Com. Aitchison: Proceed.

The Witness: I should like to say that $2.04 was the rate prescribed by the Commission in the Western Trunk Line Class Rate Case, and afterwards increased under Ex Parte 123; but afterwards, the carriers voluntarily reduced the rate to $1.96. On page 24, about the middle of the page, the statement is made, "However, on interterritorial class rate traffic generally, where the rating in the Southern classification is lower than that in the Official classification, the practice is to observe as a minimum, not the Official territory scale of rates, but merely the Official territory rate from or to the border." Since writing that, I have learned that last October temporary 4th Section relief was granted as to that situation on less than carload traffic only; so that at present the rate under the Southern classification is applied on interterritorial shipments even though that rate is lower than the Official territory rating to and from the border. Then again on page 42, which is the page of tables only, I believe I refer to those as the present rates, whereas in fact, through an oversight, the Ex Parte 123 increases were not included. Lastly, in the comments beginning at [fol. 223] the bottom of page 64 and extending over to page 65, the statement is made, "If a line were drawn from a point on the western border of Tennessee near the town of Halls, northeastward through Nashville to Bristol, the portion of the state to the north and west of the line would include approximately 26 per cent of the total area, 27 per cent of the total population, and 28 per cent of the total manufacturing of the state", and so on. On rechecking that, recently I found I have made certain mistakes there and that actually the area north and west of the line as recomputed is about 23.9 per cent of that of the entire state and includes approximately 25.4 per cent of the population and 25.0 per cent of the manufacturing of the state.

Mr. McCollester: What was that last, please?

The Witness: As recomputed, actually the area north and west of the line is about 23.9 per cent of that of the entire state, and includes approximately 25.4 per cent of the population and 25.0 per cent of the manufacturing of the state.

By Mr. Smelker:

Q. Then at the top of the page, the figure "26" should be "23.9"?

A. The figure "26" should be reduced to 23.9.

Q. What should 27 be?

A. 27 should be 25.4.

Q. And 28?

A. The final figure should be 25.

Q. Is that all you have, Mr. Jensen?

[fol. 224] A. That is all I have to volunteer with reference to the paper.

Mr. Smelker: If the Commissioners please, we now offer in evidence exhibit No. 7.

By Com. Aitchison:

Q. The contents of this are true and correct, are they?

A. Yes, sir, subject to the qualifications we stated.

Com. Aitchison: Is there any objection to the receipt of this exhibit in evidence? (No response.) It is received.

(Exhibit No. 7, Witness Jensen, received in evidence.)

Mr. Smelker: That is all.

Com. Aitchison: You may cross examine.

Mr. Grubbs: I would like to ask a few questions, if the Commissioner please.

Com. Aichison: Mr. Grubbs.

Cross-examination.

By Mr. Grubbs:

Q. In the forepart of your document, you say in substance that in the past there have been broadly two rate patterns observed in this country; that in the east the rates on high-grade commodities have been relatively low and on low-grade commodities, relatively high, and the converse of that has been true in the south and in the west. Is that substantially correct?

A. Yes, sir. I think so. It is not exactly the way I have stated it.

Q. No. That is true. Now, at the top of page 28 you say [fol. 225] that up until about 10 years ago you held to the

view that the pattern in the south and in the west was the sounder one and served better the public needs.

A. Yes.

Q. That is correct, is it not?

A. That is correct.

Q. You say a little later on that subsequently, in recent years, by reason of the impact of motor competition on the rate structures, you have altered the view you once held?

A. Yes.

Q. To quote the words that are written on the subject you say "sets at rest any previous doubts as to the mould in which the rail-rate structure must be recast". You do not specifically say what is meant by that statement which I have just quoted, but I take it that what is meant is that the pattern in the south and in the west must in your judgment follow now that which has been observed in Official territory or the east?

A. Yes.

Q. Is that correct?

A. Yes.

Q. In the plans which you unfold in your document following this statement, you have undertaken to give effect to that conception?

A. Yes.

Q. That is a correct statement, is it not?

A. Yes.

[fol. 226] Mr. Grubbs: That is all, thank you, sir.

Com. Aitchison: Is there any further cross-examination?

Mr. Wagner: I have one or two questions.

Com. Aitchison: Do respondents have anything further? (No response.) We will hear from the shippers, then. Mr. Wagner.

By Mr. Wagner:

Q. Mr. Jensen, did you obtain your present average rate levels in large part from the railroads' merchandise traffic study?

A. Yes. The answer is "Yes" as I have indicated in the exhibit.

Q. By means of the merchandise traffic study can you make any computation as to class rate traffic alone? When I speak of "class rate traffic alone", I mean traffic moving on ratings in the classification and the class rates themselves.

A. You cannot, no, sir.

Q. By the merchandise traffic study, can you compare commodity with commodity?

A. You cannot.

Q. Does the merchandise study include any carload traffic?

A. It does not.

Q. Was it merely an estimate on your part, or had you any figures upon which to base your conclusion that the relative rate levels were the same on carload traffic as on less than carload?

A. I had no concrete data upon which to base that statement.

Q. Have you any authoritative figures upon which to [fol. 227] base your estimate that 30 per cent of the commodity rated less than carload traffic in the south is matched by similar traffic in the north?

A. No, sir. I think that the figure of 70 per cent is probably a bit high.

Q. Could you use the merchandise study at all in determining the rate level in the west?

A. No, sir.

Q. How did you arrive at your average haul on column traffic?

A. By computing from the A. A. R. report the average class rate paid in cents per hundred pounds and what percentage of first class that rate represented. From those figures the distance can be ascertained from the Southern class rate scale, 270 miles.

Q. The same with respect to the Eastern scale?

A. The same thing.

Q. As to the commodity rated traffic, what formula did you use?

A. Could I add a bit to the answer to the previous question?

Q. Yes.

A. While I drew my average distance for class rate traffic from the Southern and Eastern scales respectively, I knew that there was probably a certain amount of New England traffic in the north and Florida traffic in the south, where the normal scale does not apply, but higher scales apply, as we all know, in both territories. I thought that that [fol. 228] would make the average distance, the actual

average distance a bit shorter in each territory. Then I stated in this paper I thought it probably would not be enough to affect the result in any event; that what distortion there was in the south would be no greater than the corresponding distortion in the north.

Q. Perhaps you misspoke yourself. It would make the average haul slightly longer, would it not, because of your higher New England rate applied to the lower Eastern scale? Your distance would be a little longer, would it not?

A. The average actual distance would be less than would appear by reference to the Eastern and Southern scales.

Q. If you applied the rate in New England of 115 for a distance, of, we will say, 50 miles and applied that 115 rate to the 100 class rate base, you would have a higher distance, so your average would be a little higher?

A. The averages, as stated in the paper, would be greater than the actual average.

Q. That is right.

A. Yes.

Q. Do you know how the mileages were obtained by the merchandise study—pardon me. You did not answer yet in connection with the commodity rated traffic.

A. The average distance for class and commodity traffic combined can be computed with what I think is a fair approximation of accuracy directly from the A. A. R. report. [fol. 229] Likewise, the average rate paid. Of course, the latter can be computed exactly from the average distance, class and commodity traffic combined, and the average rate paid on such traffic. It is possible, of course, to determine the average percentage of first class which that rate represented. Then with corresponding data with respect to class rate traffic alone, it is of course possible to take the class rate traffic out of that composite, leaving the commodity traffic alone and compute the average distance, the average rate and the average percentage of first class of the commodity rate.

Q. Well, how did you take care of traffic moving 500 or more miles?

A. Well, speaking of the south for illustration, the report shows that the traffic commences to taper off rather sharply after 200 miles, beyond 200 miles, speaking of each 100-mile block. Now, we know that there is no longer haul, short line, wholly within the south than about 1,100 miles; and

of course we know also that there would be no less than carload traffic moving from Cairo, Illinois, to Homestead, Florida, so that all of the traffic which is included in the A. A. R. report as moving over 500 miles, has to be disposed of before 1,100 miles is reached. What I did was to plot a curve from the decline of the tonnage beyond 200 miles, extended to 1,100 miles in a way which would dispose of all of it by the time 1,100 miles was reached. In that way I computed, or perhaps I should say I estimated [fol. 230] an average haul for shipments moving more than 500 miles. From that, then, I determined the average for all of them.

Q. In other words, you did the equivalent of creating a distance curve on the basis of what figures you actually had?

A. That is right.

Q. Do you know how the mileages were obtained in connection with the merchandise study itself?

A. The report does not expressly state how the mileages were obtained, but enough appears in the report, I believe, to justify the statement that the distances are short line distances and were obtained by reference to the class rate scale.

Q. By applying the first class rate between two given points to the scale and in that way using the scale distance?

A. Well, I do not know exactly, of course, how it was done, but we do know that in the north and south the first class rate is an index to the short line distance and distances are shown in the A. A. R. report only for the north and the south. They are omitted on interterritorial traffic and in the west where the short line distance cannot be obtained by reference to the first class rate.

Q. Well, then, is this the approximate method whereby they determined the distance between point A and point B a commodity, we will say, moved on fifth class——

A. Mr. Wagner, I do not know how they obtained the dis- [fol. 231] tance. I am telling you what I have deduced from the report.

Q. Very well. Did the merchandise study include distances in the west or on interterritorial traffic?

A. It did not.

Q. You state that the first class rates in the north and south are much closer together now than they have been at

any time in the past. Are not the first class rates in the north and south closer in cents today than they were prior to Ex Parte 123?

A. No. They are further apart. My statement as to that is incorrect. I was thinking in terms of percentage difference.

Q. In fact, are they not further apart in cents now than they were when they were prescribed?

A. Nothing has occurred since the Ex Parte 123 increases, Mr. Wagner.

Q. What is the foundation for your statement that your comparison is commodity for commodity?

A. No other foundation than appears in the exhibit itself. I should like to know more about it, but I believe if 70 per cent of the traffic moving on commodity rates in the south is put aside as uniquely southern traffic, what would remain in the two territories would be comparable traffic.

Com. Aitchison: Off the record.

(Discussion outside the record.)

Com. Aitchison: On the record. Proceed.

By Mr. Wagner:

Q. You state that so long as the southern first class rates [fol. 232] exceed those in the north by a greater percentage than the difference in the actual rate levels in the two territories, it is impossible by any readjustment of classifications or otherwise to devise interterritorial class rates which will enable shippers in the two territories to compete in common markets on an equitable basis. Does that mean that if the relative level of the first class rates is not completely corrected, you will continue to have the same troubles that exist today?

A. Yes, but to the extent that they are corrected, or partly corrected, your troubles will be reduced.

Q. In other words, the same troubles will be there, but in slightly lesser degree?

A. That is correct.

Mr. McCollester: That is assuming that there are troubles.

By Mr. Wagner:

Q. In dividing the south, you referred to some traffic density statistics. Were they prepared by the Commission?

A. Yes, sir.

Q. Are they in a public document?

A. I do not know, sir.

Q. Are they available to us?

A. I believe so. I do not know, Mr. Wagner, but I think they are.

Q. In other words, just recently the Commission has been [fol. 233] obtaining statistics as to traffic density by states?

A. As to traffic originated and terminated.

Q. As to traffic originated and terminated?

A. Per mile of road in each state.

Q. Yes.

A. That is right.

Q. But you are not familiar with whether they are published as a public document as yet, is that right?

A. That is right. I could not say as to that.

Mr. Ribe: That information is shown in a public document, although I am unable to say at this time in just what document it is contained.

By Mr. Wagner:

Q. In connection with your dividing line, can you indicate how we can locate your Tennessee line? Have you available before you the counties which would be north of that line?

A. Yes, I do.

Q. Can you readily read them into the record, or if you will read the counties at the line which are in the north, for instance, you may be able to eliminate some of the counties.

A. Some of them are portions of counties. I have a list here of all the counties or portions of counties north and west of the line as I have sketched it in this exhibit.

Q. Will you read that information into the record, please, Mr. Jensen.

[fol. 234] A. They are as follows: Obion. Dyer. Weakley. Two-thirds of Gibson. Henry. One-half of Carroll. One-half of Benton. Stewart. Houston. One-half of Humphreys. Montgomery. Two-thirds of Dickson. Robertson.

Cheatham. Two-thirds of area and nine-tenths of population and manufacturing of Davidson. Sumner. One-fourth of Wilson. Macon. Trousdale. Two-thirds of Smith. Clay. Two-thirds of Jackson. Overton. Pickett. One-half of Fentress. Two-thirds of Scott. One-half of Campbell. Claiborne. Hancock. One-fourth of Hawkins. One-sixth of area and two-thirds of population and manufacturing of Sullivan. One-third of area and one-sixth of population and manufacturing of Johnson.

[fol. 235] Q. How did you arrive at your progression beyond 500 miles and why did you use that progression?

A. The reasons are stated in the exhibit, Mr. Wagner, all the reasons I have.

Q. Does the exhibit state why you used 13½ cents instead of 12? If it does, I will rely on the exhibit, but I am asking you.

A. It does not state that.

Q. How do your progressions compare with those Mr. Hobbs has in his exhibit 5 and exhibit 6 as rectified, do you know?

A. No, I do not, Mr. Wagner. Mine, however, are not true curves at all.

Q. I beg your pardon?

A. Mine are not curves at all. The progression which I have suggested, setting aside a common terminal element of 25 cents, first class, in all territories—the line haul progression is uniform from a theoretical zero to 500 miles, straight line, and beyond that it is likewise straight line, but at a reduced rate of progression.

Q. You indicate that before unification and merger of the Official with the other two classifications can be accomplished, the first class rates must coincide with accurately measured differences in the average actual rate levels. If that is so, why do you make the south a higher per cent than its actual average relative rate level?

A. Well, Mr. Wagner, I think my suggestions are really quite conservative. I did not have as many facts as I should [fol. 236] like to have had. I am quite convinced that the rates in what we might term the "deep south" should not exceed those in the north by as much as 20 per cent, but I do not know how much less than 20 per cent the excess should be, so I stopped where I did.

Q. In determining your suggested relative rate levels, you used only the existing relative general rate levels as you

could compute them, is that correct, and did not use any question of cost or competitive conditions or the like?

A. I did not attempt to consider costs. I should say this, I think: my paper is not altogether clear in that respect. When I spoke of the actual average rate level, I had in mind class traffic and commodities for which distance scales of rates are appropriate. It is hard to say just what that does or does not include, but I did not have in mind coal, for instance. The rate for coal plainly may never be fitted into any class rate scale.

Q. In other words, what you had in mind was all commodities that moved on distance scales, whether it was a class rate scale or related thereto or not related thereto?

A. All commodities for which, as I said, average distance scales are appropriate.

Q. Now, you state that the rates will not be right and that only when the rates are made right will it be possible to unify classification. What do you think would be right?

A. Haven't I answered that fully, Mr. Wagner? I do not [fol. 237] know what would be right.

Q. That is because of insufficient information at hand at the moment?

A. Quite right.

Mr. Wagner: That is all.

Com. Aitchison: Is there any further cross examination?

Mr. Hollopeter: Yes.

Com. Aitchison: Mr. Hollopeter.

By Mr. Hollopeter:

Q. Mr. Jensen, I would like to inquire first with regard to your statement on pages 4 and 5 of exhibit No. 7. At the bottom of the page you make a comparison, as I understand it, between the transportation charges for a shipment moving 700 miles, and on the other hand, two shipments of the same commodity, the same size, moving 350 miles east.

A. Yes.

Q. Is that in any sense to be intended to support the idea that the aggregate of intermediate rates should be applied instead of the through rates?

A. No, sir.

Q. Well, the latter part of the statement seems to imply that there is very little difference in the service, as you

illustrate, except for a duplication of the billing and an additional placement for loading and unloading.

A. That is correct.

Q. Is it not a fact that there will be two complete termi- [fol. 238] nals eliminated in the through movement as compared to the two local movements?

A. Yes, sir. That is right.

Q. The other thing, perhaps, that causes the lower rate for the through movement of 700 miles compared to the aggregate of the intermediates is this thing you have suggested before, the bending down of the scale on the long distances. Does that take care of the additional difference in the charges?

A. Yes, sir. That accounts for the present very great difference in the charges.

Q. Well, you do not advocate, do you, that this bending down of the scale for the longer distances should be eliminated at this time?

A. I do not. My exhibit is prepared on the basis of a lower progression for the long haul than for the short haul shippers.

Q. Is that lower progression only to the extent you just mentioned a moment ago, that at one point in the scale you reduce your rate of progression? You would eliminate the other break in the progression that is now normally considered and applied in scales?

A. Yes.

Q. Is that correct, Mr. Jensen?

A. Yes.

Q. Can you give us briefly the reason for eliminating all but one break in the rate of progression in your scales?

[fol. 239] A. I have stated my reasons at some length in the paper, Mr. Hollopeter. I think the carriers will have to come more nearly to a straight line progression in the future than they have in the past. As we know, the practice in the past was to impose pretty heavy charges per mile on the short haul shipper on the theory probably that he had a lower total charge in any event than his long haul competitor and that was probably all right, too. But with the trucks here, we know that while the short haul shipper perhaps could still pay, he will not pay any more. He ships by truck.

Q. Now, as to interterritorial rates, you discuss, beginning with page 94 of your paper, the interterritorial rates.

Is it your position that interterritorial rates should be the same in both directions, normally so?

A. In theory and principle, they certainly should be the same.

Q. There might be exceptions. I grant you that. I am not asking you to tie it down entirely.

A. If the rates should be revised along the lines I have proposed here, I think there might still be a necessity in some cases for lower rates from the south to the north than from the north to the south, but the need would be much less than it is today. It might not exist at all.

Q. You are not recommending uniform classification ratings at this time, I understand; is that correct?

A. That is correct. I am not.

[fol. 240] Q. If, as you say, you start on the basis that normally the rates ought to be the same in both directions, yet if you apply ununiform classification ratings, that itself will bring about different levels of rates in different directions, will it not?

A. It will not, unless you applied a different classification in one direction than in the opposite direction.

Q. Isn't that quite frequently the case when you have different classifications in different territories?

A. Where the so-called destination classification principle is used, you do have that frequently.

Q. As long as you have different classifications it would be necessary to arbitrarily apply one classification in preference to another in both directions, unless you would have different rates, is that not true?

A. Yes. That is true. My suggestion here is that the same basic classification be applied in all cases in both directions. But I have said, as I said just now, that it might be necessary to put in exceptions from the south to the north on certain commodities lower than the Southern classification and to apply those exceptions northbound only.

Q. Now, may I develop briefly your position on uniform classification. Would you endeavor to reflect in your classification ratings to any extent revenue needs, or would you reserve that for the rate scale itself?

A. Chiefly, if not altogether, the rate scales.

[fol. 241] Q. Is there any other reason, then, why we could not have uniform classification throughout the entire territory covered in this case that you have in mind?

A. You mean, at present?

Q. No; as a result of this case, we will say.

A. If the class rate scales themselves were harmonized throughout the country—I do not mean by that necessarily that they be put on a common level everywhere—then we could and surely ought to have classification uniformity. I do not think classification uniformity could ever come from the establishment of rates such as I propose here. There would be a much closer approach to uniformity than we have had heretofore, but you could not reach it altogether.

Q. Just why would that result? I mean, if you had a uniform classification, for instance, throughout the entire territory and you needed a rate differently related as between territories, could not that be produced by adjusting the scale without touching the classification?

A. That is right. It could be produced by adjusting the scale and I say the scales ought to be adjusted before you try to impose any uniformity of classification.

Q. Well, as a matter of fact, if you should adjust your scales now with ununiform classifications, any adjustment you might try to make in your scales would be defeated, would it not, by the lack of uniformity in the classifications? [fol. 242] A. I am not sure I know what you mean, exactly.

Com. Aitchison: I am not sure, Mr. Hollopeter, I understand what you are driving at at all. According to Mr. Jensen's report, he proposes to give the section where you live, the lowest rate level basis anywhere in the United States. Why are you trying to tear down his exhibit? I wish you would be frank about it and tell us.

Mr. Hollopeter: I am not trying to tear it down, Mr. Commissioner, and I am not approaching it from the standpoint that the territory in which I live has the lowest or suggested lowest basis of rates. What I am trying to develop is, what is the proper basis; whether that might be higher or lower for one territory than another is not in issue and we should not be so concerned with it at this time. I am simply trying to develop, if I might, the use in the mind of this witness as to a uniform classification. Frankly, we believe that uniformity of classification could be brought about here. I want to develop what he had in mind against it, that is all.

Com. Aitchison: Well, I think the witness perhaps inadvertently acquiesced in one of your statements when he said that the classification should not reflect the revenue needs of the carriers. Certainly to the extent the traffic is of such a grade it will bear a higher classification, it must reflect the revenue needs of the carriers, must it not?

The Witness: Yes, but I think my answer was the [fol. 243] revenue needs should be taken care of chiefly, if not exclusively, in the rate scales. Of course, the two conditions exist together. You can hardly say which it is.

Mr. Hollopeter: I would like to ask just one or two more questions.

Com. Aitchison: Proceed.

By Mr. Hollopeter:

Q. With regard to your suggested scales, Mr. Jensen, page 1 of appendix 1—by the way, in the Eastern territory, under "Proposed scale Trunk Line," you have 10.5 per cent, a 10.5 per cent scale. Is that correct?

A. That is a typographical error. I did not mention it, because it seemed so obviously a typographical error. It is 105 per cent, of course.

Q. It should be 105 per cent?

A. That is right.

Q. Now, you start at 10 miles with exactly the same rate, or rather, 100 per cent rates.

A. Yes.

Q. Do you grade gradually up to reach 5 per cent above the scale at any particular point, or did you attempt to not reach it until you got to the entire end of the scale?

A. I attempted to make the rates 5 per cent higher immediately. Of course, I first set aside the 25-cent terminal charge and the difference in line haul level, 5 per cent difference in line haul level is reflected in all of the rates [fol. 244] shown in the table, however short the haul. In the 10-mile table, you speak of, it just happens due to the disposition of fractions that they come out 25 cents.

Q. That would be true of all the other scales?

A. Yes.

Mr. Hollopeter: That is all.

Com. Aitchison: Is there any further cross-examination?

Mr. Bee: I have a few questions, if the Commissioner please.

Com. Aitchison: Mr. Bee.

By Mr. Bee:

Q. Mr. Jensen, as I understand your study, pages 46, 47 and page 66 of exhibit 7, you found that the rates in Mountain Pacific territory were a certain level as compared to the rates in so-called Central and Official territory, and you reached the conclusion as to what the relationship should be between the rates in Official territory on the one hand and Central and Mountain territory—that is, Mountain Pacific territory east of the Pacific Coast proper—on the other hand; and then you built a ladder or bridge between the two territories, one to the other on the pillars that you found supporting the old bridge, is that correct?

Mr. Smelker: Do you understand the question?

The Witness: I did build a ladder, yes, with the rungs not quite so far apart as in the present.

By Mr. Bee:

Q. Do you not say on page 66 that the pillars that [fol. 245] support the foundation or the division lines between zones are not where you yourself would place them, but you found them there and are just going to leave them there?

A. That is right. That is what I say.

Q. Now, you assign the southwest, which is Oklahoma, Texas east of the so-called Zone 4, all of Arkansas, and that portion of Louisiana west of the Mississippi River, roughly, to so-called 130 per cent territory?

A. Yes, sir.

Q. When we use that, we understand those percentages refer only to the line haul relationship?

A. Right.

Q. So we will just use it with that statement?

A. Yes.

Q. What justification or reason did you have, Mr. Jensen, for increasing the percentage relationship 10 points for Oklahoma and Arkansas, as an example, over southern Missouri and Southern Kansas?

A. The only justification I had is stated in the report, or in the exhibit. I start out by saying that the present

excess of the Zone 4 and Mountain Pacific first class rates over those in the east is about 80 per cent, and that I believe the excess certainly should not be more than 40 per cent. Then I go on to say that if we build up by reasonable gradations from the highest to the lowest, we would get a much better situation all around than exists [fol. 246] today.

Q. Well, are you aware of any traffic or transportation condition or any other factor going to the maintaining of freight rates that would justify the assessing of a rate 10 percentage points higher in Oklahoma and Arkansas than applies in Southwestern Missouri?

A. I did not analyze that southwestern situation particularly, Mr. Bee.

Q. On page 66 you find that it is unfair to the southern portion of Florida to apply the L-2 arbitraries; and you found in New England it is unfair, although you found that traffic conditions justify it, to apply arbitraries much over the 100 per cent zone, and you took them off. You put Florida into the south on a 120 per cent basis, did you not?

A. In both cases, Mr. Bee, I expressed the view that the retention of the arbitraries would be injurious to the railroads.

Q. Well, do you not think it would be injurious to the railroads to maintain the arbitraries of 10 percentage points to Oklahoma, Arkansas and Texas and western Louisiana when they are so highly competitive with the other territory around it?

A. It would lessen the degree of injury under which they are laboring today by reason of the much greater arbitraries.

Q. Let me call your attention, please, to the language on page 84.

Com. Aitchison: What page?

[fol. 247] Mr. Bee: Page 84. Refer to the lower portion of the page, please. It reads: "That difference is wider than the difference between the average rate levels on class traffic in the two zones, and in consequence the railroads have found it necessary to make their classifications in the southwest somewhat lower than in Western Trunk Line territory. This has given rise to a good deal of fourth section difficulty."

By Mr. Bee:

Q. Now, is that not the same transportation condition or competitive railroad condition that you said you found in Florida?

A. No, sir. That is a different situation, really. The present rates in the southwest I think exceed too greatly those in Western Trunk Line territory and to compensate for that the railroads have found it necessary to put in lower classifications in the southwest than in Western Trunk Line territory. That has made difficulty along the Kansas-Oklahoma border, fourth section difficulty, and that difficulty will continue until the two sets of rates are brought closer together.

Q. Well, do you believe that two territories as closely adjacent as the Southwest and Zone 2 of Western Trunk Line territory are—do you believe that you can work with a different rate level in the two territories, Mr. Jensen?

A. As I said, Mr. Bee, I did not go into the Southwestern situation particularly in preparing this paper. I did not go into it at all, in fact. That, of course, is a very big ques-
[fol. 248] tion in itself, as to just where those boundaries should be drawn in the southwest, or if any should exist.

Mr. Bee: That is the point I wanted to reach, Mr. Jensen.

By Mr. Bee:

Q. If there are no different transportation or traffic conditions or if the costs are comparatively the same for handling traffic in those territories, then why should there be a difference between those territories in the rate levels?

A. Making all the assumptions you have made, the answer obviously is that there should be no difference.

Q. You know yourself of no difference between those levels?

A. There could be adequate justification for the difference under actual conditions.

Q. I say, you yourself know of none?

A. The fact that I do not know does not mean that there is none existing.

Q. Well, the fact you do not know of them does not mean they do exist, either?

A. No.

Q. On page 77 I note that you use this language: "Nor, of course, could the public fairly be asked to accommodate

itself to the abrupt change in shipping practices and relocation of markets which so sharp a break with the past would entail."

A. Yes.

Q. Is it your opinion if the record clearly indicates that [fol. 249] the adjustment is wrong and that a certain territory has been discriminated against, there should be no relief, because the public must not be asked to stand a sharp break from the past?

A. I suppose any readjustment that would give relief to the public would be welcome, even though it might be a sharp break.

Q. Well, it must naturally follow that if someone is to be advantaged, someone probably will be disadvantaged, will they not, Mr. Jensen?

A. Yes, sir.

Q. And if the record should indicate that the relationship has been wrong in the past, simply because it would cause some disruption to someone else, is that any reason why the territory which has been discriminated against should not be now placed on an equal basis of rates?

A. If the record should establish that there is no reason for the difference, of course the difference should be eliminated.

Q. Mr. Wagner asked you something about your pages 77 and 78, and the rate of progression beyond 500 miles. I understand that up to 500 miles you took the Official progression as the Commission fixed it, that is, the total amount of the progression, and then rebroke it into probably more logical steps.

A. Merely converted it into a straight line.

Q. That is what I say. You broke it into more logical steps by converting it into a straight line.

A. I merely converted it into a straight line.

[fol. 250] Q. Beyond 500 miles you gathered something from somewhere and added it to the progression which the Commission had used in the official case and thereby you increased your rates materially for long hauls, and the longer the haul the more you increased them by that reaching out and adding something. Would you tell me why you reached out and got that extra percentage?

A. My answer to you would be the same as to Mr. Wagner. I do not know of any reasons to add to what appear in the report. I see no need for reducing the long haul rates

in Official ter*ter*ritory. Of course, that influenced me somewhat in selecting 15.5 cents for 100 miles as the rate of progression beyond 500 miles.

Q. Under your basis there will never be a haul in Official territory in excess of 600 miles, approximately, is that correct?

A. That is incorrect. There will not be a haul in Central territory in excess of 600 miles.

Q. Yes. By increasing the rate beyond 500 miles 33⅓ per cent, you have little effect upon whatever result may happen in Official territory, do you not? There is little effect because there is only one third increase in the last number of miles, is all it can be, but if you come out to Oklahoma with a haul of probably 900 miles before you get to the river and then anywhere from 400 to 800 miles to get to Texas with an additional 400 or 600 miles, that additional one-third for every mile after you pass 500 miles becomes very material, does it not?

[fol. 251] A. For a haul of 900 miles into the southwest I suggest a 31 per cent reduction from the present first class rate, in Zone 4 of the southwest.

Q. Yes.

A. In Zone 3, 25 per cent reduction.

Q. Yes, but you still give them a much higher relative rate than applies in the east, because you raise that rate of progression one-third after you pass 500 miles, and it does not hurt the east, but it does hurt the south and the southwest, does it not?

A. It surely does not hurt the west at all. In the west, I am suggesting such substantial reductions in the rates that however great the distance, there is always a reduction. Frequently there is a pretty considerable reduction.

Q. Well, you mean that it does not affect them compared to what they have now, but if you had left the eastern progression as you found it, as you did for the first 500 miles, then the change you have made beyond 500 miles does affect the west, does it not?

A. Then the result would have been lower rates.

Q. Yes.

A. Throughout the country.

Q. Yes.

A. Since I used this interterritorial scale basis.

Q. Here is a statement I cannot understand on page 80. [fol. 252] You state: "In Western Trunk Line territory and

the Southwest, for reasons presently to be discussed, it is contemplated that existing revenues will be maintained for Zones 2, 3, and 4 as a whole, and that there will be reductions", and so forth.

A. Yes.

Q. Now as I read that, you believe in cutting the rates, and doing something with the classification, or in some other way handling this matter so that the revenues go right back to what they are today?

A. That is right.

Q. What profit would there be to us if our rates are reduced and the way they are to be stated is to be changed back, so we will pay just exactly what we pay today?

A. The profit, as I see it, Mr. Bee, is that a readjustment such as I suggest would permit for the first time the establishment of workable interterritorial class rates.

Com. Aitchison: We are having a very difficult time hearing you, Mr. Jensen.

The Witness: I am sorry.

Com. Aitchison: Read the last answer, please, Mr. Reporter.

(Answer read.)

The Witness: That is right. It would not produce interterritorial class rates which would be altogether right and proper, but I do think they would be greatly better than the interterritorial class rates of today.

[fol. 253] By Mr. Bee:

Q. Mr. Jensen, one of the complaints in our territory has been that we cannot locate a soap factory in the state of Oklahoma because of the competitive rate adjustment from the Eastern territory. Now, if our soap manufacturer is going to have a reduction in rates in the Southwest and then have his commodity picked up from class 4 and put to class 2½ times first class, what profit will there be to him, and how will he be in any better position, with Central Freight Association staying on the classification at fourth class, but the Oklahoma soap man having his classification changed to some place above fourth class necessary to produce that same revenue that was produced under the high rate and lower classification? How can he meet that competition?

A. The situation of the Oklahoma soap maker I think would be improved somewhat in that I suggest, as you pointed out yourself, an alteration in the relation between long and short haul rates. The Oklahoma man being, I presume, a short haul shipper serving the southwest, would certainly find it easier in distributing his product——

Mr. Smelker: Louder.

The Witness: —would certainly find it easier in distributing his product to meet the competition of a soap maker shipping into the southwest from Official territory.

Mr. Bee: I cannot follow that.

By Mr. Bee:

Q. If his rate is going to be reduced and his classification [fol. 254] elevated so that his charge per hundred pounds for shipping soap is going to be identical, how is he going to be in any better position? He might as well keep a low rate and high classification, so long as his total freight charges remain the same.

A. I do not see where you can——

Com. Aitchison: Mr. Bee, I suggest that you ask one question at a time.

Mr. Bee: All right.

By Mr. Bee:

Q. Will you tell me how——

Com. Aitchison: Just a minute.

Mr. Bee: Pardon me.

Com. Aitchison: You have asked a question. You want it answered, do you not?

Mr. Bee: Yes, sir.

Com. Aitchison: Well, go on and answer it, Mr. Jensen.

The Witness: In answer to the previous question I indicated how I thought the Oklahoma soap man would be helped by a readjustment of the class rates as I have suggested. I do not advocate anywhere a reduction of the revenue of the carriers, that the carriers are now collecting on class rate traffic, except possibly in the far west in Mountain Pacific territory, where they move nothing on class rates anyhow. The virtue of my proposal, if it has any, is to simplify the problem——

Com. Aitchison: Off the record.

[fol. 255] (Discussion outside the record.)

Com. Aitchison: On the record.

The Witness: The virtue of my proposal, if it has any, is to simplify the problem of interterritorial class rates and to bring about, as I believe, a better relation between long and short haul rates and an alteration in the relation between long and short haul rates, which I think is compelled by highway competition.

By Mr. Bee:

Q. You intend that Official territory as it now is or as you create it, and what is called Zone 1 of Western Trunk Line territory, shall have the same classification, I take it?

A. I have suggested that the rates within Zone 1 of Western Trunk Line territory and between that zone and the remainder of Official territory as now constituted, be made subject to the official classification.

Q. Yes. Now, then, you provide different classifications as, I understand it, for Zones 2, 3 and 4 of Western Trunk Line territory?

A. Yes, sir.

Q. That means that Oklahoma, Arkansas, Texas, and Louisiana will have one classification, and Central Missouri, Iowa, and Nebraska will have another classification. Now, how can we compete across that territory on our absolute border, one to the other, with two classification bases there?

[fol. 256] A. Your class rates, Mr. Bee, would be brought into much better relation with those of Zone 1 of Western Trunk Line territory than they are today.

Q. Would they be brought into any better relation? I do not care to argue with you, Mr. Jensen, but if you are going to preserve the revenue for a commodity in Oklahoma and you are going to give the territory just north of us the Official classification basis, how could there be any competition between the two territories?

Mr. Smelker: That is about the fourth time Mr. Bee has asked this same question. It seems to me it has been answered.

Mr. Bee: I will pass it, then.

By Mr. Bee:

Q. Refer to page 82 of your exhibit, Mr. Jensen.

A. Yes.

Q. Do I understand it is your suggestion to the Commission that they make some kind of a rate or rating suggestion to the carriers and then discontinue these proceedings and let the carriers go on as they have for the past 20 years to make a uniform classification?

A. My proposal, Mr. Bee, is as stated on the page to which you refer.

Q. Well, you say, "Therefore, in order to permit the work to go forward in an orderly way" and so forth. I think in about 1935 the Commission issued its supplemental 21st order in Docket 13535 and the carriers were [fol. 257] told in an orderly way to put those commodities upon one uniform basis. This is 1941, and that orderly way has not come about as yet. Is it your intention that the classification shall be unified in that orderly way as it has been in the past, as they have done in other cases, Mr. Jensen, instead of the Commission now giving us a uniform classification?

A. It is not my thought, Mr. Bee, that the Classifications should be or can be made uniform, even if rates should be established such as I suggested.

Q. Well, you do expect that the southwest will have to continue on exceptions on any basis of rates you have suggested in this study, do you not?

A. I think that would be the result, yes, sir.

Q. You do say on page 92 that you think there should be nothing done further now than to merely start this work in the east, leaving the west on exceptions to the classification because of the resulting dislocation of markets. That is about the same statement as you made on page 70-some odd, that the present people who have it must be given more consideration than the ones who have been discriminated against, is that right?

A. No. That is not right.

Mr. Bee: Just one more question.

By Mr. Bee:

Q. You stated on page 97 that the volume of class traffic moving from midwestern Zones 2 and 3 into Official ter-

ritory was comparatively small. May I ask where you [fol. 258] got that information?

A. I have a pretty definite impression that it is comparatively small, that is, compared with the southeast, and I think there is quite a movement of class traffic on commodity rates. There may not be as much on commodity rates as I have thought.

Q. You say in the next line that it is not greatly important what classification governs the class rates between the Southern zone of the south and the west. May I ask where you got the information that it is not material what classification governs for the traffic from the west to the south?

A. I cannot see where it makes any great difference, Mr. Bee.

Q. Well, if there is a heavy volume of traffic moving across there, Mr. Jensen, would it not be very material to the manufacturers, or those who are trying to be manufacturers in the southwest, to know what their classification was or to have a similar classification to move into the south as the people in Official territory?

A. I am suggesting, of course, that the Southern classification be applied southbound from Official territory.

Com. Aitchison: Please read the answer.

(Answer read.)

The Witness: Into the south. Now, the differences between the Southern and the Western classification it seems to me are not so very great that it would seriously hamper your southwestern man in shipping into the southeast if his traffic were rated under the Western classification.

[fol. 259] Q. Well, is it not your suggestion that we in the southwest must stay up on exceptions at the present time?

A. As I say in the exhibit, I rather think that it will still be necessary to move most of your class traffic in the southwest on exceptions, because I think perhaps that 30 per cent is too great an excess over the Official territory rates and that will have to be compensated for by a lower classification.

Q. Well, now, if you give us 10 points higher in a rate level than the south, wouldn't we have to have exceptions

from the west to move from the west to the south to compete with those people?

Mr. Smelker: I object to that. It is argumentative.

Mr. Bee: I do not think it is argumentative at all. I am simply asking as to his opinion of where we have to have classification exceptions.

Com. Aitchison: This has developed into pretty much of a debate between counsel and the witness. I wish you would keep your examination more on a factual basis.

Mr. Bee: It is hard, Mr. Commissioner. There is no factual basis in the report. It is theoretical, and you have to go on theory. I would like for the witness to answer the question, if he would.

Mr. Smelker: Read the question, please, Mr. Reporter.

(Question read.)

[fol. 260] Com. Aitchison: Now, what do you mean by "those people"?

Mr. Bee: I just said, from the Official to the South——

Com. Aitchison: Who are "those people"?

Mr. Bee: The people in Official territory.

Com. Aitchison: Manufacturers?

Mr. Bee: Yes, sir.

Com. Aitchison: He is confining it to manufacturers, now.

The Witness: You would not need exceptions, Mr. Bee. You would not be entitled to them, in my opinion, if there was justification for a 10 per cent difference in the rates. You should still pay the same classification as your competitor from the north and in any event I would point out that under the method of construction of interterritorial rates as I suggest, your 10 per cent inflation would end at the Mississippi River.

By Mr. Bee:

Q. What classification basis would we have to get across there?

A. You would not have the Official under any proposal of mine. I believe it does not make much difference whether it is Southern or Western.

Q. Well, won't the classification depend on the amount of charges we pay regardless of the class rate?

Com. Aitchison: Read the question, please, Mr. Reporter.

(Question read.)

Com. Aitchison: You do not mean that, do you, Mr. Bee?

[fol. 261] Mr. Bee: No. I will withdraw the question.

By Mr. Bee:

Q. Will not the classification govern the total freight charges we will pay regardless of the class rate?

A. That is right.

Q. Now, may I ask you just one more question: in answer to Mr. Wagner you stated it was not intended that your study should apply to coal, I believe. Are there any other general commodities that you could give us that it does not apply to, Mr. Jensen?

A. I should not like to try to name them. There are some, of course.

Q. Was it intended to apply to lumber? I am just trying to get an idea in my own mind.

Com. Aitchison: Livestock?

By Mr. Bee:

Q. Sand and gravel?

A. Of course, each of those commodities would have to be studied separately when the time came. I am inclined to think that the rates for livestock might be fitted into a properly constructed class rate scale. I do not know for sure. So it is with many other commodities. I do not know just where you would have to stop. I mentioned coal as one commodity which is usually out.

Q. What would you say as to sand and gravel and crushed rock and those commodities which usually move short distances?

A. I think they should move on class rates. I have always thought so.

Mr. Bee: Thank you very much.

[fol. 262] Com. Aitchison: Is there any further cross examination?

Mr. Little: I have one or two questions.

Com. Aitchison: Let us avoid repetition as much as we can. Mr. Little.

By Mr. Little:

Q. Mr. Jensen, on page 84, in the third line from the bottom of the page you use the words "classifications in the southwest."

A. Yes.

Q. Am I correct in understanding that the Western classification is the classification in the southwest?

A. The Western classification, of course, is the basic classification in the southwest.

Q. All right. Now, I would like to follow that, Mr. Jensen, by this question: with that fact in mind, when you say "classifications", using the plural form on page 84, and on page 86, when you say "Southwestern classifications", and "Western Trunk Line classifications", in every one of those cases just what are we to understand those terms to mean?

A. I include the exceptions, Mr. Little.

Q. Do I correctly infer from your paper that it would be your purpose to have the respondents, and that you would expect the respondents to make as many classifications or groups of ratings as they might find necessary to substantially maintain their present revenue position?

A. I do not know that I can answer that exactly, Mr. [fol. 263] Little. I think the number of classes, counting as classes all of these column ratings, is much too extended; there are way too many of them. I do not know if the carriers should undertake a revision of their classification such as I have suggested here. I do not know, of course, how many they would bring forward.

Q. But you have stated in this paper in several places that a uniform classification being impossible, practically, at this time, in your opinion the adoption of your new class rate proposal to the territory under investigation would require the respondents to have a pretty free hand in making ratings either higher or lower than those in the present classifications to maintain their revenue position?

A. They would surely have no freer hand, Mr. Little, than they have today. Anything which might be proposed would be subject to complaint or suspension.

Q. Well, now, if you will refer to the last paragraph on the bottom of page 82, is not the process of consideration of this problem by the carriers in substance what I have indicated in my previous question?

A. Mr. Little, in your previous question, as I understood it, you asked whether the railroads would be given a free hand in revising the classification, and my answer was to that that they would not be.

Q. I should not say "free hand" in the sense of being free from restraint. Of course I expect the Commission [fol. 264] and watchful parties and all of the Commission's good staff to function. I do not mean "free" in any improper sense. I meant that it was your expectation in connection with this plan that in due course, the carriers would consider the need of revision of the existing ratings in the various tariffs in which they now occur in order to maintain the present revenue?

A. Quite right.

Q. But as I understand it, to be fair, you say if in the course of investigation and revision they find justification for reductions, you do not inhibit them, is that right?

A. Or increases.

Q. The primary purpose being to maintain existing revenue, is that correct?

A. Yes. That is right, but I would not want to tie them down to that.

Q. Now, at the bottom of page 84 you refer to the 25 per cent difference in the levels of Zone 3 and Zone 1 scales and say, "That difference is wider than the difference between the average rate levels on class traffic in the two zones." Are you informed, Mr. Jensen, whether that statement would be correct if you consider the position of Zone 3 territory in Western Trunk Line territory as distinguished from the application of Zone 3 rates in the southwest?

A. I think that difference would be true of Zone 3 as extended into Western Trunk Line territory.

[fol. 265] Q. Do I infer from that answer that in your opinion the classification exceptions and ratings in Zone 3 territory in Western Trunk Line are identical with those in the Southwest?

A. No, sir, they are not.

Q. Well, do you not take into account, Mr. Jensen, in determining the class rate levels, the effect of the exceptions on rates in cents per hundred pounds in comparing the two territories?

Mr. Smelker: Do you understand the question?

The Witness: I do not understand just what you mean.

Mr. Little: I think we can make it clear in just a minute.

The Witness: All right.

Mr. Little: You say, "That difference"—between Zone 1 and 3—"is wider than the difference between the average rate levels on class traffic in the two zones, and in consequence the railroads have found it necessary to make their classifications in the Southwest somewhat lower than in Western Trunk Line territory.

By Mr. Little:

Q. Now do you differentiate between the Southwest and Western Trunk Line Zone 3?

A. I do.

Q. You do?

A. Yes, sir.

Q. Well, do you have any knowledge presently as to [fol. 266] the relation of classification exceptions as a whole in Western Trunk Line Zone 3 as distinguished from the Southwest?

A. I think that in general the classifications in Western Trunk Line territory including Zone 3, are higher than those in the Southwest. In other words, the Western Trunk Line exceptions extend right on through Zones 1, 2 and 3.

Q. Well, Mr. Jensen, do you know whether the body of class rate exceptions applying in Western Trunk Line Zone 1 east of the Missouri River are the governing basis of classification exceptions in Zone 2 lying immediately adjacent and west of the Missouri River, or in Zone 3, lying immediately west of Zone 2?

A. I answered that a moment ago when I said my impression and understanding was that the exceptions in Zone 1 quite generally extend on through Zone 3.

Q. If you were in error as to the facts in that connection, what effect would it have on your conclusions with respect to rate level adjustments, Zones 2 and 3, as compared with Zone 1?

A. It would depend upon what the error was, Mr. Little.

Q. Mr. Jensen, do you try to keep in touch with proceedings before the Commission from time to time involving these classification questions?

A. Yes, sir.

Q. Do you recall the I. & S. case involving heating apparatus in Western Trunk Line territory?

A. I do not recall any recent case on heating apparatus.

[fol. 267] Q. In that case an effort was made——

Com. Aitchison: He said he did not recall any such case.

Mr. Little: All right.

By Mr. Little:

Q. Do you, in connection with your duties, keep some contact with and are informed as to proposals on the Western Trunk Line Committee docket and other committee dockets?

A. No, sir.

Mr. Little: That is all.

Mr. Childe: I have one or two questions, if the Commissioner please.

Com. Aitchison: I would like to ask one question, to clear up one point.

By Com. Aitchison:

Q. When you spoke about preserving the revenues of the carriers in the Southwestern area, you had in mind, did you not, that by proper alignment of the class scale the rail carriers would be able to regain certain of the traffic which has gone to the trucks?

A. No, sir.

Q. Or didn't you?

A. No.

Q. You did not have that in mind?

A. No. I did not have that in mind. What I had in mind was a reduction in the class rates compensated by increases in classification sufficient to preserve existing revenues as a whole.

[fol. 268] Q. Well, there is one thing which has not been brought out here. Is it your intention that the suggestions you make shall apply to all carriers, or have you had in mind Class 1 carriers?

A. I had not given any thought to distinguishing between classes of carriers. My thought was that these suggestions should apply to whatever carriers are subject to the existing class rate scale.

Q. Well, the basic data from which you worked generally applied to Class 1 roads, but made some allowance for weak lines, did they not, branch lines?

A. I did not undertake to cover by this paper the subject of arbitraries for short or weak lines or arbitraries or differentials for any carrier.

Com. Aitchison: You may proceed, Mr. Childe.

By Mr. Childe:

Q. In your study, Mr. Jensen, did you have in mind that the lower classes should bear approximately the same percentage relation to first class that they do now, or some different relationship?

A. In the south and west, some different relationship.

Q. Can you state what relationship you had in mind?

A. Yes. I had in mind a spread in the classes which would reflect substantially the existing spread between the actual rates now being charged on high-grade and on low-grade traffic. In other words, to put down your first class rates to conform to the realities, put them down to a level where you can commence to charge first class rates again on commodities which on any reasonable theory of [fol. 269] classification belong in first class. That, of course, will result in making your class rates for low-grade traffic a higher percentage of first class than they now are.

Q. Did you have in mind retaining for less than carload traffic substantially the classes 1 to 4 relationships now prevailing?

A. No. I had nothing definite in mind on that, Mr. Childe. I devoted a page or two to a discussion of that very point in the paper. I do not know what I could add to it.

Q. I do not understand how the class 1 rates could start at 25 cents as you suggest, and the revenues could be substantially maintained without a radical alteration of the percentage relationships of classes 2, 3 and 4, and I find nothing in your discussion indicating how you intend that that should be dealt with.

A. I had not thought, Mr. Childe, that any radical alteration woul dbe compelled by the adoption of an initial first class rate of 25 cents for what I have called the terminal element here.

Q. It is obvious, is it not, that if the class rates start with 25 cents and progress as you have suggested, and if the present class relationships are maintained, it would substantially reduce the revenues on class freight, at least for less than carload?

[fol. 270] A. I do not think it would substantially reduce the class revenue. The reductions, of course, would exist only in the short hauls and there usually is very little short haul less than carload traffic today.

Q. In any event, you made no study to determine whether or not the revenues on less than carload traffic as a whole would be maintained or increased or reduced under your proposed scale, as I understand it, is that correct?

A. That is right.

By Com. Aitchison:

Q. How much less than carload traffic moves 5 miles?

A. Nothing.

Q. 10 miles?

A. I assume practically none.

Mr. Childe: Were you through, Mr. Commissioner?

Com. Aitchison: Yes.

By Mr. Childe:

Q. With reference to carload class traffic you indicated that if the cost elements were decidedly different, that on less than carload there should be a separate scale of less than carload class rates, did you not?

A. Yes, sir.

Q. Have you looked at the carload versus less than carload cost elements as developed by Dr. Edwards in his exhibit 3?

A. No, sir.

Q. You have not?

[fol. 271] A. No, sir.

Q. Assuming that his study indicates that the terminal element and also the line haul element for less than carload is radically different than the carload, it would follow that you would recommend separate scales for less than carload, would you not?

A. Yes, sir. I expressly so state in the exhibit.

Q. That being true, would you still retain the present classes and class relationships on carload freight?

A. You mean,—I do not know what would happen.

Com. Aitchison: You mean, the relation between each other——

The Witness: I do not know what would happen.

Com. Aitchison: Just a minute. You mean the relation between each other, or the relation to first class?

Mr. Childe: Both. One would follow the other. If they retained the present relationships, it would be the present in relation to the first class as well as to each other.

Com. Aitchison: Not if they made a separate scale for the highest of the carload classes.

Mr. Childe: Well, as I understand it, the witness would have the present first class relationships retained, but he would have a lower first class for carload than he suggests for less than carload.

By Mr. Childe:

Q. Do I understand you correctly?

A. Yes. That is true in the south and the west ,and [fol. 272] perhaps true also in Official territory. I am uncertain there. I think there is so very little traffic moving on the class rates in the south and west under the ratings in the classification proper that the carriers might well take the reductions in the first class rates which I suggest and use the existing percentage relationships for whatever little traffic is now moving under the classification proper without any appreciable sacrifice of revenue.

Q. In other words, you would continue the present system of exceptions and commodity rates rather than class rates for carload traffic in the western district, would you not?

A. I think it would be necessary to move much traffic in the west under classification exceptions; not so much as at present.

Q. Even if changes in classification were confined to the suggestions you make in your study, it would require a radical alteration of the present consolidated classification both as to ratings in less than carload and carload, would it not?

A. No, sir. I do not think it would result in much change in the classification proper. I say at one point

in the report that the classification revision contemplated would consist largely of cancelling or increasing exceptions in Official territory and in the south and west almost exclusively so.

Q. Mr. Jensen, if 25 cents be taken as class 1 for carload traffic and the present carload classes and relationships are maintained, would it not radically change the rate levels [fol. 273] and rate revenues on carload traffic in the west and south and east alike?

A. It would, as I have said repeatedly, alter the relation between the long and short haul rates.

Q. Would it not also alter the levels of the rates from start to finish in these territories?

A. That surely is no part of my proposal.

Q. Well, if it would have that effect, it was something you did not contemplate or intend in your study, as I understand you?

A. Yes. That is right. Perhaps I can amplify that a bit. In general, the combination of the reduction in class rate and increase in classification would result in maintaining the present rate for hauls of average length on the particular commodity. For hauls shorter than average length, the rate would be reduced, and for hauls longer than average, it would be increased.

Q. Refer to the statement on page 8 of your study that reads, "the rates on many heavy and cheap commodities are higher in the east than they are elsewhere."

A. Yes.

Q. Was that based upon any data in your possession?

A. No, no concrete data.

Q. What is the authority for the table appearing on page 9?

A. That is based on my general knowledge and study of the subject of classification.

Q. Based upon specific data in your possession?

A. No, sir.

[fol. 274] Q. As of what date do these comparative rates and values apply?

A. Apparently 1929. I do not know whether I show that or not. I thought I made that clear.

Q. Have you any up-to-date inforamtion on that subject?

A. On what particular subject?

Q. The relationships as shown in the table on page 9.

Mr. Smelker: He already said that was based on general knowledge he had.

The Witness: Those relationships do not hold good today, Mr. Childe. We all know that. I do not suppose it would be possible to trace out any such pattern as I have tried to draw here today.

By Mr. Childe:

Q. Were you through?

A. No. I wanted to add one more thing.

Q. All right. Go ahead.

A. I say in the middle of page 8, "The ratings shown in the table are those which were considered appropriate for carloads of heavy freight of the indicated values per ton prior to the time, some 10 or 12 years ago, when the rate structure in both territories commenced to disintegrate under the impact of highway competition."

Q. On page 13, in the last paragraph: "classification differences in the two territories in the majority of instances being merely accidental," and so forth. Will you explain what you mean by that?

[fol. 275] A. I would not know how to elaborate on what I have said in the exhibit. I have tried to make clear there that in my opinion, at least, the Western and Southern classifications were constructed on the same basic principles, and if that be true, it would follow that any differences as to individual commodities would be largely accidental.

Q. Now do you know, Mr. Jensen, that the number of classes and the relationship of classes in the two territories are quite widely different, especially on carload freight, and do you consider those differences as unimportant, or what do you mean by the term "accidental"?

A. When I speak of uniformity in classification—or differences in classification, I think always in terms of percentage of first class.

Q. Well, take class 5 in the south: it covers, does it not, an almost completely different set of commodities than class 5 in the west?

A. They are not the same ratings, Mr. Childe.

Q. On page 17 you state, "since the ratings in the Western Classification on the whole are lower than those in Official Classification." Is that based upon any data?

A. No, it is not.

By Com. Aitchison:

Q. Would you not consider the classifications themselves as data?

A. I would, Mr. Commissioner.

[fol. 276] Q. You are familiar with them, are you not?

A. Yes, sir, but in using the term "classifications" here, I include also the exceptions, and I make that clear in a footnote at some early place in the exhibit.

Q. That is on page 15?

A. The bottom of page 15.

Q. You are familiar with the exceptions, are you not?

A. Yes, sir. I have some knowledge of the exceptions.

Com. Aitchison: Proceed.

By Mr. Childe:

Q. On page 71 you state, "The charge for hauling a low-grade commodity should be higher in the north than in the south." Do you state that as a classification principle?

A. Having regard for the principles upon which the Southern and Official classifications have been constructed, that result should logically follow.

Q. You mean, the principles which have resulted in the present class rate adjustment, do you not?

A. Yes.

Q. What I wanted to inquire about is whether you state that as a principle which in your opinion should govern the future classification ratings of the south versus the north:

A. Of course, I say, Mr. Childe, that the differences between the two classifications should be eliminated.

Q. Then if they are eliminated, your statement would no longer hold, would it?

[fol. 277] A. That is right. It would not. The differences, however, could not be eliminated until after the class rates themselves were harmonized. The differences in the classification are the result of the differences in the rates, in my opinion.

Q. At the bottom of page 85 you make the statement that, "Zone 3 is the largely predominating zone from the standpoint of volume of the class rate traffic." Is that based upon any factual data?

A. In the Southwest, I believe I said, did I not?

Q. I believe so, yes.

A. Well, we surely know that there is more traffic in Zone 3 of the Southwest than in either Zone 2 or Zone 4.

Q. You did not intend to make that statement with reference to Zone 3 in Western Trunk Line?

A. I did not.

Q. Why in your opinion in a proceeding involving the question of uniform classification is a discussion premature of attempting a uniform classification? I do not quite get your point of view there. I am referring to your statement on page 92.

Mr. Smelker: What page?

Mr. Childe: Page 92. I quote: "But the writer is definitely of the view that any discussion and study of the proper number of classes and of the spreads between them would, at this juncture, be premature. Nothing more can be accomplished at present, and nothing more should be attempted, than to bring the class rates in the several [fol. 278] territories into better relation with each other."

The Witness: Yes.

Mr. Smelker: Now what is your question, Mr. Childe?

By Mr. Childe:

Q. The question is, why in a proceeding which involves the question of whether those changes should be made, you reach the conclusion in advance that they should not be made? What is your thought in that respect?

A. I think we cannot have uniformity in classification until our rates within the different rate territories are brought into better relation and alignment with each other. The rates in the south and west must be brought closer to the level of those in Official territory. When that is done, I really do not believe uniformity in classification will be a problem any more. It will come about quite naturally. Certainly I did not have in preparing this paper the facts upon which I could conclude just what would be a right level for the rates in the south and the west. All I have done is to suggest that they be reduced, and I think that is the minimum of reduction that should be made; but until a greater reduction is made, there can be no uniformity in classification, in my opinion.

Q. You did not mean to say in this proceeding there should be no attempt made to bring about uniformity, then, as I understand it?

A. Well, of course, it is for the Commission to say [fol. 279] whether they will attempt to do it, or what they will attempt to do. I would not, myself, attempt to readjust the rates sufficiently to permit of the establishment of a uniform classification just now.

Q. Why not?

A. Because in order to determine what the rates should be, it would be necessary, as I see it, to find out just what the railroads in the several territories are hauling on class rates at present, how far they are hauling it and what they are getting for hauling it. I should not say "on class rates." I mean, how much class traffic they are hauling, how far they are carrying it, and what they are getting for hauling it.

By Com. Aitchison:

Q. It would also be necessary to go into the question of how much they could get, would it not?

A. Well, I said I would want to ascertain how much they are getting. It would take probably two years to collect and digest data of that kind. When it was properly assembled and digested, I believe then we could determine for the first time about what the actual difference is in level on class traffic in the various territories.

Q. That all ignores the existence of competition with other carriers, does it not?

A. It does.

Q. Is that not a practical matter you would have to take into account?

A. Sir?

[fol. 280] Q. Is that not a practical matter you would have to take into account?

A. I think, Mr. Commissioner, in assembling that information, we would find that the rates have already been greatly influenced by competition with other carriers.

Q. Well, your assumption then would be that the present rates are the highest that could be maintained?

A. That is right, yes, sir.

Mr. Childe: Just one or two more questions.

The Witness: Pardon me. I had not quite finished my previous answer.

Mr. Childe: Go ahead.

The Witness: If those facts were assembled and digested, it would be possible to determine for the first time what the actual average difference in level in the several territories is on class traffic. The base class rate, first class, could then be prescribed in the several territories on levels which would reflect the spread. Then, as I have said, we could for the first time have a uniform classification. However, it would take a long time and it would take a lot of money to get all of those facts together, and if it rested with me, it seems to me that in this time of national emergency, the time of the railroad people and others interested could be spent to better advantage than collecting data for a complete revision of the class rates. I do not think, however, that the [fol. 281] present situation should be allowed to stand as it is, and I think that an interim adjustment might be made such as I have proposed here, representing the minimum of what ought to be done. Then the determination of what further should be done might well await the end of the war.

By Mr. Childe:

Q. Your proposal, then, is to be considered purely as a temporary measure and not as a solution of the issues before the Commission in this proceeding? Is that a fair statement?

A. Quite right. I have emphasized that in the exhibit.

Q. You understand, do you not, that there is involved in this proceeding not only the question of rail classification and rail rates, but the classification and rates on motor traffic and on rail and water traffic?

Com. Aitchison: Not in this proceeding.

Mr. Childe: I must be wrong.

Com. Aitchison: We have a separate docket on the motor classification. It is not here before us.

Mr. Childe: It is correct, is it not, Mr. Commissioner, that the relationship with reference to rail and water rates is here involved?

Com. Aitchison: So far as they are covered by the classifications which were named in the notice and order instituting the investigation in Docket 28310, but not otherwise.

By Mr. Childe:

Q. Commissioner Aitchison suggested to you that the [fol. 282] present motor carrier competition should be considered in the readjustment of rates, of rail rates here involved, as I understood him. Is it your thought that there can be a fair settlement on that matter without first considering the question of proper classification and ratings on motor traffic by itself?

A. I do not know as to that, Mr. Childe. I do know, of course, that highway competition is here to stay. I think it will compel a revision of the rates, the class traffic railroad rates along the lines I have here indicated, relatively lower rates for shorter hauls and relatively lower rates for expensive freight.

Mr. Childe: That is all.

Com. Aitchison: Are there any other questions of this witness?

Mr. Freas: I have no questions of this witness, but I should like to make a brief statement, if I may.

Com. Aitchison: Whom do you represent?

Mr. Freas: My name is Howard Freas. I am rate expert for the California State Railway Commission. I make this statement both on behalf of the California State Railway Commission and on behalf of the Arizona Commission.

Com. Aitchison: Proceed.

Mr. Freas: We were informed by the Interstate Commerce Commission through its secretary that rates from, [fol. 283] to and between points in our territory were not in issue in this proceeding. For that reason we have not participated in the cross examination of these witnesses. We are, however, very vitally concerned with either the direct or the indirect effect this proceeding may have upon transportation in our territory. In view of the very specific proposals that are contained in Mr. Jensen's exhibit with respect to transportation in our states, we would like to have the record show that we consider many of those recommendations, if given effect, inimical to the interests of our states and if this proceeding is to be enlarged so as to take in our territory, we at that time desire an opportunity to cross examine these witnesses, and also to offer testimony in rebuttal to what their studies show.

Com. Aitchison: You are bearing in mind that the Transcontinental rates are involved in this proceeding as it stands?

Mr. Freas: I sent a telegram to Mr. Bartel, in which I stated—I think I can substantially quote it—"Studies to be offered by Commission witnesses in Docket 28300 contain proposals respecting rates from, to and between points in California. Advise if such rates are in issue and if so whether witnesses will be available for cross examination following St. Louis hearing." I sent that telegram for the reason that those records with which we had been furnished did not show that we at any time were a party to Docket 28300. I appreciate that California is directly involved in [fol. 284] Docket 28310. Mr. Bartel's reply was in substance: "The rates referred to in your telegram are not in issue." My statement, as I say, included rates from, to and between, which would naturally include Transcontinental rates. It is on that information that we have elected to take the course we have taken.

Com. Aitchison: I am sorry, but Mr. Bartel is our secretary and of course has no power and no right to define issues in formal proceedings before the Commission. Evidently he overlooked the fact that the Transcontinental rates are specifically in issue.

Mr. Freas: In Docket 28300?

Com. Aitchison: I believe they are. Are they, Mr. Koebel?

Exam. Koebel: No, sir.

Mr. J. R. Bell: It is my distinct understanding that the Transcontinental rates and Mountain Pacific rates are not involved.

Com. Aitchison: Let us look at the record, as Al Smith says.

Mr. J. R. Bell: There is no doubt but what the Transcontinental rates and Mountain Pacific rates are not involved, as you so stated in your annual report to Congress.

Com. Aitchison: Well, I probably was mistaken, as I very frequently am. However, we have those Transcontinental rates before us in some manner in this proceeding. What is it?

Mr. J. R. Bell: Not in this case, Mr. Chairman. I do not [fol. 285] know of any other case in which the Transcontinental rates are involved. I could not understand why some of these studies including Dr. Edwards' and including

Mr. Jensen's, included a discussion of Mountain Pacific and Transcontinental rates.

Com. Aitchison: Well, there is no reason why they should not be, of course, because comparisons of rates do not have to be absolutely limited to the particular area where the rates are under attack.

Mr. Norman: At the pre-hearing in Chicago in 28310, it was assumed, or at least as I recall it was your understanding that the classification ratings brought into issue the rates in Transcontinental territory.

Com. Aitchison: The classification ratings are clearly here, of course, as you know.

Mr. Freas: I understand that.

Com. Aitchison: All of this information which has been presented in Mr. Jensen's testimony as to the scales is relevant, more or less, to that issue. Of course, we are not going to make any order with respect to your rates into, between or within these excepted areas without laying a proper jurisdictional predicate.

Mr. Freas: We are very vitally concerned with those rates, particularly the Transcontinental rates. The only purpose of this statement is to have the record show that we propose to take part in that proceeding at the proper time.

[fol. 286] Com. Aitchison: That proceeding evidently is not here. I was mistaken in my assumption. I think I have cleared that up in my own mind. The Transcontinental class rates were involved. They were involved in *in* the all-commodity rate case which the Commission heard, where we specifically asked the carriers to give consideration to revision of the Transcontinental class rates. That is where I was mistaken. I think Mr. Bartel, after all, was right. Is there any other cross examination of this witness?

Mr. Foote: Yes, Mr. Commissioner.

Com. Aitchison: Now, gentlemen, we want to close, if we can, within the next 15 minutes. We have other engagements. This witness has been cross examined until there is hardly a syllable of what he has presented that has not been touched upon. I do not want to shut anybody off, but I do want you to get right down to cases and ask important questions. Do not argue with the witness. Proceed, Mr. Foote.

Mr. Foote: I represent Wisconsin shippers, if the Commissioners please.

By Mr. Foote:

Q. Mr. Jensen, on page 61 you say: "The New England classification exceptions are usually applied in Zones A and B without distinction and the Central territory exceptions are usually applied in Zone C of Michigan."

A. Yes.

Q. No special reference is made anywhere to Zone C in [fol. 287] Wisconsin which has been tied in, as you know, in some of the recent cases with Zone C in Michigan.

A. That is right. Under my proposal, extended Zone C in Wisconsin, and the rates in all of Zone 1 of Western Trunk Line territory would become 10 per cent higher as to the line haul element than those in Central territory and would include, or would be subject to the Official Classification; and extended Zone C would be merged right in with Zone 1 of Western Trunk Line territory.

Q. That is not the case at the present time, is it?

A. At the present time, as I understand it—well, I am not altogether clear about the rate basis in extended Zone C. It seems to me it is 10 per cent higher, I believe 10 per cent higher than the 15879 scale, with the Official Classification applicable on the cross lake traffic, and with the Western Classification applicable otherwise on the traffic that does not cross the boundary line within Wisconsin.

Q. Are you not mistaken about the 10 per cent higher? Extended Zone C in Wisconsin has been accorded the same level of rates as Illinois Freight Association territory, which has been thrown right into Central territory.

A. Perhaps by voluntary action of the railroads. I do not think that has been done by our Commission. I believe our Commission prescribed a basis somewhat higher.

Q. My recollection is the Commission prescribed the same [fol. 288] basis for extended Zone C territory as they did for Illinois Freight Association territory, and that territory now enjoys the same level of rates Illinois Freight Association territory enjoys.

A. I repeat: that is not my understanding, but my understanding is not very definite about Zone C. I think there is a somewhat higher basis of rates there than in Central territory except as the railroads may have reduced it voluntarily. The decisions of the Commission will show, of course, as to that.

Q. Are you acquainted at all with the difference between extended Zone C on the one hand as compared with Zone 1 in Wisconsin on the other hand? Extended Zone C is a largely developed industrial and manufacturing district running from Watertown, Wisconsin, up through Fond du Lac, Green Bay to Marinette, while Zone 1 to the west of that is more especially an agricultural district, with not very much developed manufacturing.

A. Yes.

Q. That accounts for the difference in the treatment which was accorded that district. We in Wisconsin are concerned as to just where this extended Zone C territory will be classified in this proceeding. Do you think it would be fair to include extended Zone C with Illinois Freight Association territory where it now is allocated?

A. That is one of many things which is a pretty big question in itself and certainly would require some study, but which when considered in relation to a proposal to revise [fol. 289] all of the class rates in the country, becomes something of a detail. I did not try to study that out in detail particularly. Your rates in Zone 1 today are approximately 25 per cent higher than those in Central territory. I would make them 10 per cent higher and make those in extended Zone C likewise 10 per cent higher.

Mr. Foote: Just one more question.

By Mr. Foote:

Q. On page 6, appendix 2, you show examples of the application of your formula on rates between New York and the Twin Cities and between Boston and the Twin Cities.

A. Yes.

Q. Do you recall whether you used the short line distances running through Canada in computing and applying your formula?

A. I did not. I used the short line distance wholly within the United States, as well as I could determine it, and on a dry land basis. I did not figure the distance across lakes, which I believe would be somewhat shorter—I mean, across lower Lake Michigan.

Q. Are you acquainted, Mr. Jensen, with the movement of traffic out of Wisconsin and to some extent out of the northwest across Lake Michigan car ferry routes to the east?

A. I know a good deal of traffic does so move, yes.

Q. You realize that a considerable volume of traffic moves that way, do you not, to avoid the bottleneck in going through Chicago?

A. I believe it does, yes, sir.

[fol. 290] Q. In order to secure better service and naturally more equitable rates by the use of those shorter distances?

A. Yes.

Q. Did you give any consideration to the possible use of short line distances through Canadian territory?

A. I did not, no, sir.

Q. Would it be proper under your proposal here to make use of those short line rates that the carriers handling that traffic could use?

A. Well, this suggestion of mine is something the Commission might prescribe. I think, of course, the Commission could not prescribe a rate over any route outside of the United States.

Mr. Foote: That is all.

Com. Aitchison: Is there any further cross examination?

Mr. Foote: I do not care to cross examine, if the Commissioner please, but on behalf of the Public Service Commission of Utah I wish to repeat our request that Western Trunk Line Zone 4 rates be included in this investigation and that the investigation be not confined merely to Zone 3.

Com. Aitchison: Is there any further cross examination of this witness?

Mr. Widell: May I ask one question, please, sir?

Com. Aitchison: For whom are you appearing?

Mr. Widell: I am representing and have entered an appearance for the Tennessee industrial interests generally [fol. 291] included in the Tennessee Manufacturers' Association.

By Mr. Widell:

Q. Mr. Jensen, on page 33 of your paper I find reference to the data collected by the Association of American Railroads and your reference to the traffic moved on class rates aggregating approximately 40,000,000 pounds. I do not think your paper shows the aggregate, or the segregation, rather, in first, second and third class and the lower classes,

but the traffic test referred to, of course, does break that down, does it not?

A. Yes.

Q. First, second and third class and the lower classes.

A. Yes.

Q. Just for the purpose of the question, you will perhaps accept my statement that the first, second and third class rated traffic amounted to about 13½ million pounds for the week? That can be confirmed.

A. Yes.

Q. That was for one week's traffic moving under the actual 13494 class rates in Southern territory. Of course, for 52 weeks, you would have then your approximate average annual figure. I just want you to follow me on that, Mr. Jensen.

A. If this were a typical week.

Q. Yes; assuming these things.

A. Yes.

Q. So in speaking of these figures, these figures are average figures, so that would approximate, then, around 700,-[fol. 292] 000,000 pounds per year of first, second and third class rated traffic in the south. Now, just assuming that that is the approximate average tonnage, and going then to the figures in your appendix 1, especially on page 2, where you show the present rates for the various distances in Southern territory together with the proposed rates in both the Northern and Southern Zones, because of the difficulty and almost impossibility of attempting to define this 700,-000,000 pounds of first, second and third class traffic as moving either in the Northern or Southern Zones, let us assume it would all move in the Southern Zone, where we have proposed a 120 per cent scale, because the purpose of my question is just to arrive at an approximate figure. It is difficult, of course, to break down the distances because we do not have the ton mile figures in the traffic test. We have only the 100-mile blocks, as you remember. Your paper suggests an average of 270 miles for class rate traffic, so that even if we just take that average distance, and on the assumption that the reduction would approximate the difference between—well, 270 miles does not appear on page 2 of your appendix 1, but 300 miles does, and that is probably close enough in actual cents to give us a fair conclusion—so that the present rate first class for 300 miles as shown is $1.34; do you follow me, sir?

A. Yes.

Q. The proposed first class rate under the 120 per cent [fol. 293] scale in the Southern Zone would be 89 cents, or a difference of 45 cents per hundred pounds.

A. Yes.

Q. Of course, I presume that on an average of first, second and third class, that would vary somewhere between 35 and 40 cents if we averaged those three classification ratings, is that approximately correct, sir?

A. No. I do not understand that.

Q. Well, if our first class reduction would amount to——

Com. Aitchison: Are you going to ask a question when you get through with your statement?

Mr. Widell: Yes.

Com. Aitchison: You have been making a hypothetical statement here for 15 minutes. It is about time that we got to the question.

Mr. Widell: I am just laying the basis for it. I am just about to get to it.

Com. Aitchison: It is beginning to sound like one of these psychiatrist's questions.

The Witness: I think I understand you now. The answer is "Yes".

By Mr. Widell:

Q. On 700,000,000 pounds, that would approximate, then, a net revenue loss of about $2,000,000? You will accept that figure, sir?

A. If you have calculated it, yes.

[fol. 294] Q. Your paper does not suggest, Mr. Jensen, how this revenue loss would be made up, does it?

A. Oh, yes, it does.

Q. Well, could you say how that would be made up in connection with the illustration we have just been discussing?

A. Yes. By increasing the classification. The chances are that practically all of that freight moving at first, second and third class is freight which on proper classification principles as I understand it, ought to be rated considerably higher. If the rates are reduced as suggested and the classifications are put back more nearly where they belong, the revenue will be preserved.

Mr. Widell: Thank you, sir.

Com. Aitchison: At this time I want to inquire how many more persons present desire to cross examine Mr. Jensen. (No response.) It appears that there is no further desire to cross examine Mr. Jensen.

Mr. Smelker: I would like to ask one more question, if the Commissioner please.

By Mr. Smelker:

Q. Are there any other comments you wish to make before stepping down, Mr. Jensen?

A. Nothing at all.

Mr. Smelker: That is all.

Com. Aitchison: You may step down, Mr. Jensen.

(Witness excused.)

[fol. 295] Com. Aitchison: That concludes the testimony which was to be presented here. Are there any suggestions with respect to when the parties will be prepared to resume the taking of testimony? (No response.) Are there any suggestions as to when the parties will be prepared to resume the taking of testimony?

Mr. Norman: Mr. Chairman, of course under the ordinary procedure, which I suppose will be followed here, it is incumbent upon the respondents to introduce their testimony next. The question is, then, when will the respondents be prepared to go forward, and when can they reasonably be expected to do so?

Mr. Plunkett: Mr. Chairman, dealing with the accounting features of the case, I would say that we perhaps want to put in some rebuttal evidence, but it seems to me it will take us at least a year to get ready for it.

Com. Aitchison: Are there any other suggestions?

Mr. Norman: In response to that, may I say——

Com. Aitchison: You do not need to respond to that.

Mr. Norman: I hope not.

Com. Aitchison: Any suggestion of that character which contemplates a delay of a year is so absurb on its face when it is supported by nothing other than the mere statement that the carriers desire to make such a study and they want a year to do it, is just too preposterous to be given con-

[fol. 296] sideration by a tribunal which is attempting to dispense justice in as speedy a manner as possible. You

will have to come forward with some other suggestion which is more practical, or we will decide the matter according to what we think is fair and right, unaided by any suggestions from the respondents.

Mr. Walker: Mr. Commissioner, would it be possible for us—I am speaking for the eastern roads now—to advise the Commission within the next few days on that subject? The reason I say that is this: I did not know that question was coming up here and my associates left about 30 minutes ago to catch a train east. I have not had an opportunity to consult with them. If it were permissible, I should like to have the privilege of advising the Commission on the future date of the hearing within 10 days.

Com. Aitchison: That is a reasonable request and it will be granted. There have been a number of requests made, conflicting in nature, for access to underlying information. The Commission will have to study those over, give consideration to them and endeavor to make its determination available to the parties at the earliest possible moment. Is there anything further to be brought up at this time?

Mr. Norman: I would like to say——

Com. Aitchison: Have the Southern carriers anything to say about this? (No response.) I have asked the respondents. I cannot force them to talk.

[fol. 297] Mr. Kerr: Mr. Chairman, it has been a little bit difficult for me to follow this conversation back here, but I understand you are asking now how the Southern carriers feel about this, and when they will be prepared?

Com. Aitchison: That is correct.

Mr. Kerr: So far as the traffic testimony is concerned, I remind you of the statement I made at Chicago at the pretrial conference. Our testimony, if we have to proceed in advance of what I probably improperly termed the "complainants", will be to tell the Commission what we have and how we got it. We want to hear what the complaints are about that rate adjustment which in very large measure—certainly the class rates themselves—have all been prescribed by the Commission, have been reviewed from time to time and only recently were reviewed in the North Carolina case, and effective on July 6th or 7th of this year, we put into effect generally within the south what the Commission said was a proper scale. As to the accounting end of it, that would depend very largely upon what the Commission makes available to our accountants. We are

very frank to tell the Commission that right now our accountants are not able to analyze and rebut the testimony presented by Dr. Edwards unless this underlying data is made available to them. Therefore, when they will be prepared to proceed will largely depend on the answer to that request. So far as the traffic testimony is concerned, [fol. 298] that will not take us very long. I assume, of course, you will not have another hearing until some time in the fall. There is another angle to that, Mr. Chairman, and that is the classification question. That is pretty hard to answer at this time, the classification ratings themselves.

Com. Aitchison: Well, we have heard from the carriers from the three territories. Is there anything further to be brought up at this time? (No response.) If not, the hearing will stand recessed.

(At 12:15 P. M., July 11, 1941, hearing adjourned to a time and place to be fixed by the Commission.)

[fol. 299] BEFORE THE INTERSTATE COMMERCE COMMISSION

Class Rate Investigation, 1939

Docket No. 28300

Consolidated Freight Classification

Docket No. 28310

Claypool Hotel, Indianapolis, Indiana,
Tuesday, September 22, 1942.

Met, pursuant to notice, at 10 o'clock A. M.

Before: Division—2 of the Commission, Hon. Clyde B. Aitchison, Chairman of the Commission, presiding, Hon. Walter M. W. Splawn, Commissioner, Hon. J. Haden Alldredge, and a Cooperating Committee of the National Association of Railway & Utilities Commissioners represented by:

Mr. John J. Murphy, South Dakota Public Utilities Commission;

Mr. George McConnaughy, Public Utilities Commission of Ohio; and Mr. W. H. Scott, South Carolina Public Service Commission.

Present: Paul O. Carter, Examiner, W. J. Koebel, Examiner, T. Leo Haden, Examiner.

Appearances: As heretofore noted and the following [fol. 300] additional:

Wallace T. Hughes, Room 310 Union Station, Chicago, Illinois;

H.C. Barron, 1211 Railway Exchange Building, Chicago, Illinois;

B. F. Batts, Cotton Belt Building, St. Louis, Missouri;

J. R. Bell, 205 Transportation Building, Washington, D. C.

James G. Blaine, Frisco Building, St. Louis, Missouri;

A. B. Enoch, LaSalle Street Station, Chicago, Illinois;

P. F. Gault, 400 West Madison Street, Chicago, Illinois;

H. H. Larimore, 2008 Missouri Pacific Building, St. Louis, Missouri;

Eldon M. Martin, 547 West Jackson Boulevard, Chicago, Illinois;

Conrad Olson, Northern Pacific Building, St. Paul, Minnesota;

J. P. Plunkett, 1120 Great Northern Building, St. Paul, Minnesota;

M. G. Roberts, Frisco Building, St. Louis, Missouri;

Dana T. Smith, 1416 Dodge Street, Omaha, Nebraska;

Carson L. Taylor, 891 Union Station, Chicago, Illinois;

and Robert Thompson, T. & P. Building, Dallas, Texas, appearing for Class 1 Railroads in the Western District.

A. P. Donadio, 301 B & O Building, Baltimore, Maryland, appearing for respondents in Official Classification Territory.

[fol. 301] C. B. Kerr, Richard Musenbrock, H. W. Ward, and L. S. Nichols, 7th Floor Northwestern Bank Building, Minneapolis, Minnesota, appearing for The Minneapolis & St. Louis Railroad Co.

L. A. Veroneau, 105 West Adams Street, Chicago, Illinois, appearing for Central Freight Association Lines.

Henry J. Hart, 12 Graham Building, Bangor, Maine, appearing for Bangor and Aroostook Railroad Company, and Canadian Pacific Lines in Maine.

J. P. Harrington, Room 517, South Station, Boston, Massachusetts, appearing for New England Freight Association.

Harry E. Boe, Room 1025-139 West Van Buren Street, Chicago, Illinois, appearing for The Chicago, Rock Island

and Pacific Railway Co. (Frank O. Lowden and James B. Fleming, Trustees.)

Henry Christianson and James A. Gillen, 547 West Jackson Boulevard, Chicago, Illinois, appearing for Chicago, Burlington & Quincy Railroad Company.

Guernsey Orcut, 1740 Broad Street Station Building, Philadelphia, Pennsylvania, appearing for Eastern Rail Carriers.

Robert Thompson and G. A. Ryser, Texas & Pacific Building, Dallas, Texas, appearing for The Texas & Pacific [fol. 302] Railway Company, and Southwestern Lines generally.

J. R. Mac Ananny, 150 Causeway Street, Boston, Massachusetts, appearing for Boston and Maine Railroad, and Maine Central Railroad.

D. Lynch Younger, % Law Department, Norfolk & Western Railway Company, Roanoke, Virginia, appearing for Norfolk & Western Railway Co.

J. E. Flansburg, 400 West Madison Street, Chicago, Illinois, appearing for Chicago and North Western Railway Company, (Charles M. Thomson, Trustee) and Chicago, St. Paul, Minneapolis & Omaha Railway Co.

Elmer A. Smith and Erle J. Zoll, Jr., 135 East 11th Place, Chicago, Illinois, appearing for Illinois Central Railroad Co., The Yazoo & Mississippi Valley Railroad Co., and The Gulf & Ship Island Railroad Co.

J. P. Canny, Midland Building, Cleveland, Ohio, appearing for Respondents in Official Territory.

W. N. Mc Gehee, Southern Railway Building, Washington, D. C., appearing for Southern Railway System Lines.

Frank W. Gwathmey, Shoreham Building, Washington, D. C., appearing for Southern Railroads.

H. D. Boynton, 71 Meadow Street, New Haven, Connecticut, appearing for The New York, New Haven & Hartford Railroad, (H. S. Palmer, James Lee Loomis, and Henry B. Sawyer, Trustees.)

[fol. 303] William Spaulding, 821 LaSalle Street Station, Chicago, Illinois, appearing for Chicago, Rock Island & Pacific Railway Co.

Robert D. Brooks, 466 Lexington Avenue, New York City, New York, appearing for Respondents in Official Classification Territory.

Frank L. McCarthy, 607 Security Trust Building, Lexington, Kentucky, and M. B. Holefield, 112 East Todd

Street, Frankfort, Kentucky, appearing for Commonwealth of Kentucky, and Railroad Commission of Kentucky.

J. E. Marks, 145 East High Street, Lexington, Kentucky, appearing for Kentucky Railroad Commission.

Henry S. Sherman, and T. S. Wood, 318 State Office Building, Denver, Colorado, appearing for Public Utilities Commission of the State of Colorado.

James A. Lucas, State Capitol Building, Des Moines, Iowa, appearing for Iowa State Commerce Commission and the State of Iowa.

H. A. Manning, 5 Exchange Street, Charleston, South Carolina, appearing for South Carolina State Ports Authority.

Timothy Cohan, Albany, New York, appearing for The State of New York.

T. T. Tumbrell, F. C. Hillyer and Jerry W. Carter, Tallahassee, Florida, appearing for Railroad Commission [fol. 304] of Florida, and The State of Florida.

Byron M. Gray, 611 Central Building, Topeka, Kansas, appearing for The Kansas Corporation Commission and The Kansas Industrial Development Commission.

Charles A. Carr, Pierre, South Dakota, and William Williamson, The Capitol, Pierre, South Dakota, appearing for Public Utilities Commission of South Dakota.

L. F. Sherer, Baton Rouge, Louisiana, appearing for Louisiana Public Service Commission and the State of Louisiana.

Olin Culberson, and A. J. Scrivner, Austin, Texas, appearing for Railroad Commision of Texas.

R. B. Willard, Minot, North Dakota, appearing for Public Service Commission, State of North Dakota, and Minot Association of Commerce.

Parker McCollester, 25 Broadway, New York City, New York, appearing for The Chamber of Commerce of the State of New York.

D. O. Moore, Chamber of Commerce Building, Pittsburgh, Pennsylvania, appearing for Pittsburgh Chambe. of Commerce.

Samuel H. Williams, 1129 Walnut Street, Philadelphia, Pennsylvania, appearing for Chamber of Commerce and Board of Trade of Philadelphia.

John A. Jacobson, 400 Union Commerce Building, Cleveland, Ohio, appearing for Cleveland Chamber of Commerce.

A. A. Raphael, 60 Battery March Street, Boston, Mas-
[fol. 305] sachusetts, appearing for New England Paper & Pulp Traffic Association.

Claude H. Anderson, 601 Illinois Building, Indianapolis, Indiana, appearing for Indianapolis & Southern Motor Express Inc.; Adkins Transfer Co.; O. I. M. Transit Corporation; and Jasper & Chicago Motor Express.

Frank W. Sullivan, 231 South LaSalle Street, Chicago, Illinois, appearing for Great Lakes Transit Corporation.

Paul D. Cook, Hamilton, Ohio, appearing for Champion Paper & Fibre Co.

A. B. Pratt, 15 South 5th Street, Minneapolis, Minnesota, appearing for Northern States Power Co.

Floyd F. Shields, and H. M. Sell, 221 West Roosevelt Road, Chicago, Illinois, appearing for Keeshin Motor Express Co. Inc.; Seaboard Freight Lines, Inc.; and National Freight Lines, Inc.

V. Schaffenburg, P. O. Box 329, New Orleans, Louisiana, appearing for Myles Salt Co. Ltd.

John S. Burchmore, 2106 Field Building, Chicago, Illinois and R. J. Henderson, Minneapolis, Minnesota, appearing for Minnesota & Ontario Paper Company.

Nuel D. Belnap, 2106 Field Building, Chicago, Illinois, appearing for Inland Waterways Corporation.

Charles J. McCarthy and Robert H. Sheppard, Knoxville, Tennessee, appearing for Tennessee Valley Authority.

[fol. 306] R. A. McCaffrey, Birmingham, Alabama, appearing for United States Pipe & Foundry Co.

E. DeL. Wood ,815 Broad Street, Chattanooga, Tennessee, appearing for Chattanooga Manufacturers Association.

G. W. Baxter & Donald Kirkpatrick, 608 So. Dearborn Street, Chicago, Illinois, appearing for American Farm Bureau Federation.

George H. Cunningham, 170 Varick Street (9th Floor) New York City, New York, appearing for Sterling Products, Inc.

George O. Griffith, 257 Cornelison Avenue, Jersey City, New Jersey, appearing for American Home Products Corportation, and Drug & Toilet Preparations Traffic Conference.

Wilmer M. Wood, C. United States Pipe & Foundry Co., Burlington, New Jersey, appearing for Cast Iron Pressure Pipe Institute.

George M. Leedom, 400 Chestnut Street, Philadelphia, Pennsylvania, appearing for Florence Pipe Foundry & Machine Co., and Cast Iron Pressure Pipe Institute.

Frank W. Kemp, 901 Hamilton Bank Building, Knoxville, Tennessee, appearing for Candoro Marble Co., Gray Knox Marble Co., Tennessee Marble Inc., Padgett Marble Co., Knox Iron Co., Sanford Day Iron Works, Inc.; and Brooks Equipment & Manufacturing Co.

G. C. Cochran, Birmingham, Alabama, appearing for [fol. 307] various interests.

C. E. Fowler, Birmingham, Alabama, appearing for various interests.

L. A. Gossage, 174 Third Avenue, North, Nashville, Tennessee, appearing for T. L. Herbert & Sons.

H. W. Gehrke, 611 North Broadway, Milwaukee, Wisconsin, appearing for Milwaukee Association of Commerce.

C. A. Mitchell, 90 South Second Street, Memphis, Tennessee, appearing for Memphis Freight Bureau.

C. J. Edelmann, 229 East 6th Street, Cincinnati, Ohio, appearing for The Lumber Traffic Association, and Appalachian Hardwood Manufacturers, Inc.

F. L. DeGroat, Milwaukee, Wisconsin, appearing for Jas. Schlitz Brewing Company.

H. V. Haley, Newark, New Jersey, appearing for P. Ballantine & Sons.

E. D. Hedstrom, 221 North LaSalle Street, Chicago, Illinois, appearing for Pabst Brewing Company.

J. H. Ranney, 833 Park Square Building, Boston, Massachusetts, appearing for Associated Industries of Massachusetts.

J. M. Davison, 4200 Wissahickon Avenue, Philadelphia, Pennsylvania, appearing for The American Pulley Co.

Carl R. Cunningham, 22 Mariette Street Building, Atlanta, Georgia, appearing for American Cotton Manufac- [fol. 308] turers Association.

M. M. Emmert, 310 North Avenue N. W., Atlanta, Georgia, appearing for Coca Cola Co.

L. O. Kimberly, Jr., 22 Marietta Street Building, (Room 815) Atlanta, Georgia, appearing for American Cotton Manufacturers Association; North Carolina Cotton Manu-

facturers Association; Cotton Manufacturers Association of South Carolina; and Georgia-Alabama Textile Traffic Association.

Norris W. Ford, 436 Capitol Avenue, Hartford, Connecticut, appearing for Manufacturer's Association of Connecticut.

H. J. Fernandez, Monroe, Louisiana, appearing for Monroe Traffic Bureau.

Fred M. Renshaw, 238 Main Street, Buffalo, New York, appearing for Chamber of Commerce at Buffalo.

G. H. Shafer, First National Bank Building, St. Paul, Minnesota, appearing for Weyerhaeuser Sales Co.

Freeman Bradford, 623 Board of Trade Building, Indianapolis, Indiana, appearing for Indianapolis Board of Trade.

G. W. Orewiler, 2nd Floor Board of Trade Building, Indianapolis, Indiana, appearing for Indiana State Chamber of Commerce.

W. Carroll Parks, 4226 Census Building, Washington, D. C., appearing for Leon Henderson, Price Administrator, [fol. 309] and the Office of Price Administration, Interveners.

H. R. Fritz, 619 West Chicago Avenue, Chicago, Illinois, appearing for Montgomery Ward & Co.

R. I. Myles, P. O. Box 2603, Birmingham, Alabama, appearing for American Cast Iron Pipe Co., and Cast Iron Pressure Pipe Institute.

Isaac Born, Indianapolis, Indiana, appearing for E. Rauh & Sons Fertilizer Co., et al.

Thomas C. Grady and F. C. Hillyer, Ingraham Building, Miami, Florida, appearing for The Greater Miami Traffic Association; The City Commission of Miami; and The Dade County Commission of Dade County, Florida.

Philip H. Porter, 1 West Main Street, Madison, Wisconsin, appearing for Wisconsin Manufacturers Association; Oscar Mayer & Co., Green Bay Association of Commerce; and Central Territory Rate Conference.

A. H. Ferguson, P. O. Box 572, New Bedford, Massachusetts, appearing for Boston Chamber of Commerce, New Bedford Board of Commerce, and The New England Traffic League.

Earl Girard, 4724 Walton Street, Chicago, Illinois, appearing for Fred Olson & Sons.

Ferdinand Born, 718 Chamber of Commerce Building, Indianapolis, Indiana, appearing for Chicago Suburban

Motor Carriers Association, Inc., and Wisconsin Motor [fol. 310] Carriers Association, Inc.

George D. Rives, and Donald Macleay, 1001—15th Street, N. W., Washington, D. C., appearing for American Trucking Associations, Inc., and Central States Motor Freight Bureau, Inc.

James P. Haynes, 421 West Market Street, Louisville, Kentucky, appearing for Louisville Board of Trade.

Robert Peacock, State House, Trenton, New Jersey, appearing for Governor Charles A. Edison of New Jersey, and the Board of Commerce & Navigation of New Jersey.

Ralph Merriam, 19 South LaSalle Street, Chicago, Illinois, and A. B. Costello, 310 South Michigan Avenue, Chicago, Illinois, appearing for Morton Salt Company.

C. R. Morrow, 323 Epperson Street, Moberly, Missouri, appearing for Orscheln Brothers Truck Lines, Inc.

G. E. Griffith, Niagara Falls, New York, appearing for The Carborundum Company, and Grinding Wheel Manufacturers Association.

Harry Van Antwerp, Troy, New York, appearing for Behr Manning Co.

Elmer Jones, Worcester, Massachusetts, appearing for the Norton Co.

Harry R. Brashear, Shoreham Building, 15th and H Streets, N. W., Washington, D. C., appearing for Aeronautical Chamber of Commerce of America, Inc.

[fols. 311-312] O. W. O'Berg, First National Bank Building, Austin, Minnesota, appearing for George Hormel Co.

J. Aiden Connors, 1526 Port Authority Building, 111 8th Avenue, New York City, New York, appearing for Seaboard Freight Lines, Inc.

E. J. Bachman, Columbia Building, Louisville, Kentucky, appearing for Jefferson Island Salt Co.

H. W. Wagner, City Hall, Norfolk, Virginia, appearing for Norfolk Port-Traffic Commission.

W. W. Glenn, 403 American National Bank Building, Nashville, Tennessee, appearing for Tennessee Products Corporation.

Clarence D. Lavlin, 16 East Broad Street, Columbus, Ohio, appearing for The Ohio Chamber of Commerce.

[fol. 313] PROCEEDINGS

Chairman Aitchison: Come to order. The Commission has set for further hearing at this time and place Docket No. 28300, and Docket No. 28310. Mr. Smelker for the Commission, do you have something to present?

Mr. Smelker: Yes, if the Commission please. At the hearing in this case on July 11, 1941, an exhibit, prepared by Mr. C. G. Jensen, entitled "Some Suggestions for Improvements in Railroad Class Rates," was admitted in evidence as No. 7. On page 33 of the exhibit the statement is made that in the South, during the week which ended September 14, 1939, the average haul of less than carload shipments moving on class rates was 270 miles, and the average haul in the North was 380 miles. Under date of June 11, 1941, soon after the document was made public, Mr. C. E. Widell, Transportation Director, Tennessee Manufacturers Association, Nashville, Tennessee, wrote Mr. Jensen inquiring how the information had been ascertained. The latter answered the inquiry in a three-page letter dated June 13, 1941. In response to an inquiry in that respect, Chairman Aitchison advised Mr. Widell that Mr. Jensen's letter would be offered in evidence at this hearing. Copies of the Jensen letter, with the notice of the Chairman, were placed on the press table in the office of the Secretary of the Commission at Washington, and [fol. 314] copies have been distributed. In accordance with that notice, I now offer the letter in evidence as Exhibit No. 8.

Chairman Aitchison: Is there any objection? (No response.) Received.

(Exhibit No. 8 received in evidence.)

Mr. Smelker: At the St. Louis hearing Exhibit No. 1 was introduced in evidence through the witness, Dr. W. H. Stevens, Assistant Director of the Commission's Bureau of Transport Economics & Statistics. The exhibit is a study of the economic development of the United States by freight rate territories. There has been prepared, under Dr. Stevens' direction and supervision, a second part to the original exhibit which deals with the economic development for the United States by freight rate territories, being a statistical summary of selected data, and a text

of explanation. The study consists of tables and charts giving a survey of the data by rate territories and by census years. Table No. 1 Charts 1 and 2, deals with total population; Table 2, Charts 3 and 4, deals with total gainful workers; Table 3, Chart-5 and 6, relates to agriculture; Table 4, Charts 7 and 8, concern mineral industries; Tables 5 and 6, Charts 15 and 16, cover manufacturing industries; Table 7, with the accompanying charts, deals with combined value of farm products and minerals plus the value [fol. 315] added by manufacturing; and Table 8, with the accompanying charts, covers total railway mileage. I now offer Dr. Stevens' study in evidence as Exhibit 9.

Chairman Aitchison: Dr. Stevens is not here, but of course he can be made available for examination, if any one wants to examine him. It hardly seemed worth while to bring him out here, in these troublous times, without any request that he be recalled. However, as I say, he can be made available. Is there any objection to the reception of the exhibit? (No response.) Received.

(Exhibit No. 9, received in evidence.)

Mr. Smelker: Recall Dr. Ford K. Edwards.

FORD K. EDWARDS recalled, previously sworn, testified further as follows:

Chairman Aitchison: You have been previously sworn, Doctor.

The Witness: Yes, sir.

Direct examination.

By Mr. Smelker:

Q. Dr. Edwards, I believe you have prepared or had prepared under your direction, four exhibits, which you now have before you. Will you briefly describe them, each of them, so that we can have them identified in the record.

A. The first exhibit is entitled "Interterritorial Interest of Class 1 Steam Railways."

[fol. 316] Mr. Smelker: We offer this exhibit for identification at this time, as Exhibit No. 10.

(Exhibit No. 10, Witness Edwards, marked for identification.)

The Witness: My second exhibit is entitled "Relative Territorial Costs, 1939 and 1941; Analyses of Switching Costs and other Data."

Mr. Smelker: We offer this exhibit for identification as Exhibit No. 11.

(Exhibit No. 11, Witness Edwards, marked for identification.)

The Witness: My third exhibit is entitled "Territorial Rail Costs Based on a separation of the Out-of-Pocket and Constant Expenses, 1939."

Mr. Smelker: We offer this exhibit for identification as No. 12.

(Exhibit No. 12, Witness Edwards, marked for identification.)

The Witness: My fourth and last exhibit is entitled "Territorial Unit Costs for Railroad Freight Service, 1939."

Mr. Smelker: We offer this exhibit for identification as Exhibit No. 13.

Chairman Aitchison: That is the large exhibit, is it?

The Witness: Yes, sir.

[fol. 317] (Exhibit No. 13, Witness Edwards, marked for identification.)

By Mr. Smelker:

Q. Dr. Edwards, do you have any comment to make on these exhibits?

A. Yes, sir, I have.

Q. You may proceed.

A. The Bureau of Transport Economics and Statistics of the Interstate Commerce Commission has the following four exhibits to introduce at this time. The purpose of the first exhibit, which has been identified as Exhibit No. 10, is to indicate the extent to which carriers serving one territory have operations in other territories. The extent of such interterritorial interest is believed to be pertinent for the reason that if the railways of the United States were operated as one system, the problem of standardizing rate levels and the classification of freight would be considerably simplified, although the problem of adjusting rates to cost would not be eliminated. Any inequalities in the territorial relation of rates to costs would be offset, as all revenues and all expenses would ultimately accrue to one company. On the other hand, if each rate territory were

served by a group of railways entirely identified with it, and not with other rate territories, the adjustment of rate levels to costs as a whole for each territory would be of maximum importance, as any losses in one terri — could not [fol. 318] be made up by revenue in another territory. Actually neither of these extremes exists. To show the extent of this interterritorial interest two bases of comparisons are used. The first comparison separates operating expenses, rents and taxes for each territory between those incurred by railways operating wholly within such territory and those incurred by railways whose operations extend into other territories. The second comparison in this exhibits based on the distribution of the tonnage originated and terminated for each carrier by states and by territories.

The second exhibit, which has been identified as Exhibit No. 11, shows the following: First, the change in the relative territorial costs between the years 1939 and 1941.

Chairman Aitchison: Just a moment, Doctor. Do you have copies of that statement?

The Witness: I have approximately 70 or 80 copies.

Chairman Aitchison: Have they been distributed?

The Witness: No, sir, they have not.

Chairman Aitchison: Well, then, you may stand aside until they have been distributed. Our witnesses are going to abide by the rules of the Commission, just as well as anybody else. Please see that a reasonable number are distributed to counsel, and you may stand aside until they [fol. 319] have an opportunity to examine the statement.

The Witness: I might say, Mr. Commissioner, that this statement has been amended in a slight degree, and some of what I have to say will be oral testimony. The statement is a very short one, consisting only of five or six pages.

Chairman Aitchison: I cannot help it. We must observe our own rules, Dr. Edwards. You may stand aside. Call the next witness. You keep within call, Doctor, and pass a reasonable number of copies of your statement down to the counsel tables, and let counsel glance at them, and pass them on.

The Witness: Very well.

(Witness excused.)

Mr. Smelker: Call Dr. Beatrice Aitchison.

BEATRICE AITCHISON was sworn and testified as follows:

Direct Examination.

By Mr. Smelker:

Q. State your name, please.

A. Beatrice Aitchison.

Q. Your occupation?

A. Associate Economist, Interstate Commerce Commission.

Q. How long have you been connected with the Commission?

A. Off and on, for about four years. In elapsed time, almost two years.

[fol. 320] Q. Will you briefly describe the nature of your employment with the Commission.

A. To collect and analyze data relating to the economic and statistical work of the Commission, and to write reports thereon.

Q. Will you state briefly the extent of your education.

A. I received a Bachelor of Arts degree from Goucher College; Master of Arts, Doctor of Philosophy, in Mathematics, from Johns Hopkins University; and Master of Arts in Economics, from the University of Oregon; and I have also studied at several other universities.

Q. Have you had any teaching experience?

A. Yes, off and on, for nine years, at the University of Richmond, the American University, and the University of Oregon.

Q. State the extent of your research experience.

A. I have been doing research for years in one field or another; in recent years, in transportation; and before that, in mathematics.

Q. Have you offered any writings for publication?

A. Several mathematical papers, published in Polish mathematical journals; and most recently a study of passenger demand, which was released by the Commission last Fall.

Q. Have you prepared an exhibit showing the interterritorial movement of various classes of commodities in car-

[fol. 321] load lots?

A. I have.

Q. What was the source of the material used in the preparation of the exhibit?

A. The waybills submitted by the railways to the Office of Defense Transportation, on carload freight originating on their lines May 27th, 1942. These data were used in compiling the study that I have to offer.

Q. Of what does the exhibit consist, briefly?

A. There are 52 pages of tables in all, and 10 pages of text and other explanatory material covering the tables.

Q. Have you any other comments to make on the exhibit at this time, Doctor?

A. No specific comment, no.

Mr. Smelker: If the Commission please, we now offer this exhibit, as described by Dr. Aitchison, in evidence as Exhibit No. 14.

Chairman Aitchison: Is there any objection? (No response.) Received.

(Exhibit No. 14, Witness Aitchison, received in evidence.)

Mr. Smelker: There is just another question.

By Mr. Smelker:

Q. Since compiling this exhibit, Dr. Aitchison, have you secured any further data from the Office of Defense Transportation in the way of other waybills?

[fol. 322] A. No, sir. They are doing a study of them as of today, but we have not had anything in that connection as yet. However, I do have some information from our own commodity statistics, which is rather interesting, in connection with that.

Q. Do you care to give that at this time?

A. If the Commission cares to have it.

Chairman Aitchison: Proceed.

The Witness: The totals of the second quarter commodity statistics for 1942 are available in rough form, as work sheets, for the employees of the Commission. If you will notice on Table 3, page 27 of this exhibit, the percentage that the total Products of Agriculture were of all carload freight originating on that date, was 8.288. The total for the whole second quarter of 1942 was 9.1 per cent, or a difference of .8 per cent. For Animals, on May 27, the percentage was 3.5 per cent, and for the whole second quarter 3.7 per cent. For Mines, May 27th it was 45.6 per cent, and for the whole second quarter, 44.4 per cent. Products of Forests were 8.1 per cent on May 27th,

and 7.6 per cent for the whole second quarter of this year. Manufactures & Miscellaneous were 34.5 per cent on the test date, and 35.2 per cent for the whole second quarter. These are given to show how close the percentages on the test date come to the entire quarter, which the test date [fol. 323] was in the middle of.

By Mr. Smelker:

Q. Do you have any further comment to offer?
A. I believe not.

By Chairman Aitchison:

Q. I want to ask if to your knowledge there has been prepared by the Bureau at any other time, any similar statement of the territorial movement of carload freight?
A. I have seen none.

Mr. Smelker: That is all.
Chairman Aitchison: Cross examine.

Cross-examination.

By Mr. Bee:

Q. Dr. Aitchison, referring to Table 3, and the relative ratios which you have reference to, for the Products of Agriculture, I note that grain bears a percentage of 2.5 per cent of the total traffic. That might be relatively correct as to the first quarter, or the second quarter, and as to May 27th, but you would not say that would be correct as to the entire year, would you?
A. No. This is just for this date.
Q. That is what I say.
A. I would make no attempt to forecast.
Q. Well, but your familiarity with the statistics of the Interstate Commerce Commission teaches you that the heavy grain movement commences in June, and extends [fol. 324] through the third quarter and into the fourth quarter of the year, does it not?
A. Yes.
Q. Now, again, on the same page, we note that 5.4 per cent, in round figures, of the movement of Manufacturers & Miscellaneous, was petroleum; and by following that out, we find that 4.7 per cent of the petroleum found desti-

nation in Official territory. Is that not a very unusual condition?

A. That is not reading this table correctly. This percentage of 4.7 per cent is the percentage of all the commodity movement into Official territory, that was petroleum. It is not 4.7 of all the petroleum movement. The petroleum—refined petroleum and products—comprised 4.7 per cent of all of the traffic that was consigned to Official territory.

Q. That is true, but it is a cross-figure with the 5.39 per cent, is it not?

A. It is a cross-figure, yes, sir, but it has nothing to do with the 5.397.

Q. But 5.3 per cent plus of all traffic originated, was petroleum products, was it not?

A. Yes.

Q. And 4.7 per cent of all traffic terminated in Official territory was petroleum products?

[fol. 325] A. Yes.

Q. And in other sections of your study, you show that a heavy percentage of your petroleum was terminated in Official territory. Now is that not a very unusual condition, that has only existed during the year 1942, Doctor?

A. If I understand your question correctly, as far as the total is concerned of refined petroleum shipments compared to the years 1941 and 1940 in particular—and that is, the total; not Eastern territory particularly—that amount is just about the same; that percentage would run about the same for the past two years in the second quarter. But that is not in this exhibit.

Q. Now let us get that straight, please, Doctor. On page 31 of the exhibit, in Table 3, I believe you show that 24 per cent of the origination in Southwestern territory on May 27th, was refined petroleum and its products. Is that correct?

A. Yes.

Q. And that of that—of all of the petroleum that originated in the Southwest, 47.0 per cent moved to Official territory?

A. No.

Q. No?

A. That is not correct. If you will look at Table 2 on page 25, it shows just about the same percentage, but [fol. 326] that is accidental.

Q. 48 per cent?

A. 48 per cent of all moved to Official territory.

Q. Is that not a very, very unusual condition, that 48 or 50 per cent of all petroleum products, refined petroleum products originating in the Southwest, would move to Official territory?

A. That is something that I would not be able to tell, from the Commission statistics, because they are not set up on a freight rate territory basis.

Q. Well, were you advised that Mr. Ickes had issued an order about that time prohibiting the loading of petroleum, refined petroleum products, in the Southwest, except for certain purposes, and that the Office of Defense Transportation had prohibited the loading of cars in the Southwest for movements of 100 miles?

A. I never heard that at all.

Chairman Aitchison: I think, Mr. Bee, if you have anything of that sort, you had better put it on direct yourself.

Mr. Bee: All right. Thank you.

Chairman Aitchison: Are there any further questions?

Mr. Hughes: I have just one or two questions, if the Commission please; not as cross-examination, but for clarification.

[fol. 327] By Mr. Hughes:

Q. Dr. Aitchison, I simply want to inquire of you as to the method which you followed in separating the commodities which moved on commodity rates, and those which moved on class rates. Now on page 3 of your statement, you leave the impression that you segregated those moving generally on commodity rates. Let me ask you, did the waybills from which you took your information, indicate whether the articles moved on commodity rates or on class rates.

A. No, sir, in some cases, there were not even rates given; and in other cases, there might be a rate, but in order to find out what type of rate it was, we would have had to get the distances, and that was too lengthy a process for what we had at our disposal, for the labor that we had, and the time that we had.

Q. I am interested in developing, and I would appreciate it very much if you would say just what method you

followed in separating the articles as between commodity rates and class rates.

A. In the notice to the parties, and to the public, of September 25, 1940, in this proceeding, there was a proposed order, and I believe this proposed order was—I know it was, in fact—from a waybill study; and the second appendix to that proposed order gave a list of commodity groups which the carriers were not to compile the re-
[fol. 328] quested information for, because the Commission, afer consulting with the carriers, had decided that those particular commodity classes—those classes of the classification used to report the Q C & S figures to our Bureau of Transport Economics, moved mainly on commodity rates. Those are the ones that I grouped together, and called the commodity rate group. The others that were left comprise the class rate group.

Q. Well, Doctor, how did you treat commodities that might move in a territory on classification exceptions?

A. They would be under the class rate group, I think.

Q. You so treated them?

A. I don't know. I did not check on those rates at all. I just used the list as it was given.

Q. Well, am I correct, then, Doctor, in my impression that you had to resort to certain arbitrary methods here in making your separation?

A. There was not time to go into each waybill, as it were.

Q. If I am correct, then, as I understand you, some you more or less arbitrarily assigned to the commodity rate basis; is that correct?

A. On the basis of the list in this proposed order. Now for instance, Rice, Commodity Class 41, is a small class. It is not in this group, in this list, which indicates that it was considered as moving on class rates. I do not know [fol. 329] whether it moved on class rates or not. I am no expert when it comes to tariffs, or rates. But, for simplification, and because it was a small group, I included it with all of the grain, so it would be treated as a commodity group in this case; and there are one or two other instances of that. They are all mentioned except 60; I think I left out 60, which is Cereal Food Preparations, in my explanation on page 3. That is included also with the commodity group. As a whole, these are small, very small in total, and would not make very much difference from a percentage basis.

Q. In your exploration of these waybills, did you notice any peculiar effects on the movement of this traffic as a result of war conditions?

A. As far as this study goes, the percentage of one class as compared with the percentage that the same class bore to the total in this quarter, the same quarter last year, has been remarkably stable.

Mr. Hughes: Thank you very much.

By Chairman Aitchison:

Q. How many waybills were examined, or embraced in this study, approximately?

A. I have a record of 131,398. There were a few more than that, that for one reason or another were unintelligible, and had to be discarded.

Chairman Aitchison: The railroads might take note of [fol. 330] that.

Mr. Hughes: Pardon me, your Honor. I missed that.

Chairman Aitchison: Is there any further cross examination? (No response.) Have you anything further Mr. Smelker?

Mr. Smelker: No, Mr. Chairman.

Chairman Aitchison: You may stand aside, then, Doctor.

(Witness excused.)

Chairman Aitchison: Now, you may recall Dr. Edwards.

Mr. Smelker: Dr. Edwards' statement is being distributed at this time, Mr. Commissioner.

Chairman Aitchison: Gentlemen, we are distributing copies of Dr. Edwards' statement, for the purpose of permitting counsel to take a look at it before the witness resumes. Let us please refrain from conversation at the moment, while counsel are glancing at the document. All right. You may proceed.

Mr. Smelker: Dr. Edwards.

FORD K. EDWARDS, resumed:

Direct examination (Continued):

By Mr. Smelker:

Q. You may proceed.

A. I was referring to the purpose of the second exhibit——

By Commissioner Aitchison:

Q. What number?

[fol. 331] A. Pardon me. No. 11. I had stated the first purpose. The second purpose was to show the development of switching factors used in the territorial cost studies based on switching data that have become available to the Bureau of Transport Economics and Statistics subsequent to the introduction of the Bureau's previous exhibits in this proceeding. Third, to show evidence as to the extent of circuity. Fourth, a statement of minor corrections and revisions to data previously introduced in Exhibits 2 and 3. Fifth, to show the extent to which the traffic in each territory consists of heavy-loading traffic, such as coal and ore. Sixth, to show the effect on costs of differences in the weight of trains handling heavy-loading traffic compared to the weight of trains handling other traffic. My third exhibit, which has been identified as Exhibit No. 12, shows the results of further studies made of territorial costs based on data for the year 1939. These studies include the separation of the out-of-pocket costs from the constant expenses and the separate development of the territorial unit costs for each. With the out-of-pocket expenses there is now included a return on that portion of the property value which was found to be variable with traffic. In a previous study in Exhibit 3 introduced by the Bureau of Transport Economics and Statistics, the distribution of the constant expenses followed [fol. 332] the more or less common procedure of apportioning these expenses on the basis of the out-of-pocket costs. For the purpose of determining the full distributed expenses in the present cost study the constant expenses are directly distributed over the revenue producing units of traffic handled, that is, revenue tons and revenue ton-miles. The fourth exhibit, identified as Exhibit No. 13,

contains a series of charts providing a comparison by territories of the out-of-pocket costs and the full distributed expenses with the present territorial class rate schedules excluding, however, the adjustments resulting from the Commission's decision in Ex Parte 148. Table 1 of this exhibit shows the territorial unit costs separated between line and terminal and between out-of-pocket costs and constant expenses. The compilation of these unit costs is shown for each territory in Tables 2 to 6 of this exhibit. A general textual description of the procedure followed is shown in Chapter VI of the exhibit entitled "Territorial Rail Costs Based on a Separation of the Out-of-Pocket and Constant Expenses." This exhibit has been identified as Exhibit No. 12. In the previous cost study introduced in *Exhibit 3 there was shown* a series of territorial cost scales for various lengths of haul. It will be noted that in Table 1 of this new exhibit, namely, Exhibit No. 13, there are shown only the terminal costs per 100 pounds accompanied by the line-haul costs per mile for various weight [fol. 333] loads and various types of equipment. To compute the costs for any desired distance and for any given load, multiply the line-haul unit costs by the one-way mileage, and to the product thus obtained add the corresponding terminal cost.

In conclusion, I should like to point out that Tables 1, 2 and 3 of the exhibit entitled "Territorial Rail Costs based on a Separation of the Out-of-Pocket and Constant Expenses"——

By Commissioner Aitchison:

Q. Give us the exhibit number.

A. Exhibit No. 12. —provide a comparison of the results of the previous study with the present study. Any difference in the cost is occasioned first by the inclusion in the out-of-pocket costs of a return upon that portion of the property value which was found to be variable with traffic; and secondly, by the change in the treatment of the constant expenses. While the relationship of the costs between territories varies in some degree with the weight of the load under consideration, the general position of the territories when arranged in the order of their relative cost, remains generally unchanged from that base on the previous study. The principal difference between

the two studies is in the full distributed expense for the light-loading and heavy-loading commodities. For example, the direct distribution of the constant expenses [fol. 334] results in a lower full distributed expense for traffic, the weight of which is less than the average. Correspondingly, it results in a higher full distributed expense for traffic, the weight of which is greater than the average. Where the average load of the traffic approximates the territorial average, there is very little change in the cost. It is believed that the distribution of the constant expenses used in the present study, which is Exhibit No. 13, is the more appropriate, in so far as a cost-of-service distribution is concerned. The previous study, that is, Exhibit 3, introduced by myself, is not withdrawn. It still serves to provide territorial comparisons based on a treatment of the constant expenses which has been commonly used in the past.

Mr. Smelker: If the Commission please, we now offer in evidence Exhibits Nos. 10, 11, 12 and 13.

Chairman Aitchison: Is there any objection?

Mr. McCollester: Yes, Mr. Chairman. As far as the State of New York is concerned, we are confronted with the difficulty, first, that we have not been able to read the approximately 90 pages of text which is in all of these exhibits, and which I take it is a part of the exhibits, so that what I have to say at this time by way of objection is perhaps only preliminary. I object to Exhibit No. 11 in so far as there is included therein any data based upon [fol. 335] the switching cost studies that were conducted by Dr. Edwards in connection with the Automobile Case, Docket 28190. The ground of my objection, so far as the rules of evidence are concerned, is that the switching cost study was based upon reports made by the railroads to Dr. Edwards, not part of the regular statistics of the Commission, and that the parties making those reports are not available for cross examination, to explain the bases of their reports. Now, that is very important, for this reason: As was developed in Docket 28190, there was a considerable variation in the method employed by the different railroads in reporting their switching time and switching engine hour costs. It was shown in that proceeding that, on the basis of the figures used by Dr. Edwards, it would take some 18 days to switch the Plym-

outh plant of the Chrysler Automobile Company at Detroit, placing in and taking out the cars that were moved in and out with one pull; and that the switching operation alone incident to the movement of automobiles from Detroit to Chicago, where there is an over-night haul, would take, as I recall it, some 23 days. Now that was due to the use of the figures reported by one of the railroads, which were improperly used by Dr. Edwards, perhaps as a result of a misunderstanding. The figures for that railroad were quite different, and represented quite different results from the figures for competing railroads. I cite that, [fol. 336] if the Commission please, simply to show that unless we have available for cross examination, so that the record may be complete, the men who made the reports of the basic data upon which Dr. Edwards has predicated his study, his study itself is thoroughly incompetent. I object also to Exhibit No. 12. I have not had an opportunity as yet to read all of the text, but I have glanced through it, and in glancing through it I note that a large part of the text consists of quotations from various people, who are apparently not here; and that a large part of it is argumentative matter, which I understand is not in accordance with the new rules of the Commission with respect to exhibits, namely, that exhibits must not contain argumentative material. I make those objections now, if the Commission please, but I would refer to have your Honors reserve your ruling on the exhibits until we have had an opportunity to read them in their entirety, which we have not had an opportunity to do up to the present moment, for the obvious reason that there is too much in them to read in a few minutes.

Chairman Aitchison: These exhibits have been available for more than a few minutes, Mr. McCollester.

Mr. McCollester: They have been available to the people who happen to live in Washington, and who were "tipped off" that they were to be put on the Commission's press [fol. 337] table. I will be perfectly frank with your Honors, and say that I have had them for two or three days, but even in two or three days I have not had an opportunity to read all of the text.

Chairman Aitchison: You are objecting to Exhibits 10 and 12, are you?

Mr. McCollester: No, 11 and 12.

Chairman Aitchison: I thought you referred to the exhibit showing "Interterritorial Interest"—No. 10.

Mr. McCollester: No, your Honor. No. 11 is the first one that I am objecting to, "Relative Territorial Costs, 1939 and 1941, Analyses of Switching Costs and other Data"—and it is the "Analyses of Switching Costs" that I am objecting to in particular. If any of the data is carried forward from the switching figures testified to by Dr. Edwards in 28190, then I also object to them. If any of that data is carried forward into the other exhibits, I naturally object to the other exhibits.

Chairman Aitchison: Well now, you are either objecting, or you are not.

Mr. McCollester: Well, if your Honor please, until I have had an opportunity to study the exhibits, I cannot tell whether those data have been carried forward or not, and therefore I am asking your Honors to reserve your ruling.

[fol. 338] Commissioner Aitchison: No objection appears to have been made to Exhibits Nos. 10 and 13, and they will be received.

By Mr. McCollester:

Q. May I ask, Dr. Edwards, if any of the switching figures from Docket 28190 have been carried forward into either — your Exhibits 10 or 13 here?

A. No.

Mr. McCollester: Very well.

Chairman Aitchison: Does that satisfy your objection as to those two exhibits, then, Mr. McCollester?

Mr. McCollester: Then I do not object to those exhibits, no, sir.

(Exhibits 10 and 13, Witness Edwards, received in evidence.)

Chairman Aitchison: We will reserve our ruling on the other two exhibits for the time being.

By Mr. Smelker:

Q. Dr. Edwards, have you any other comment that you desire to make?

A. Yes, sir, I have a little additional explanation to offer. I would ask that you refer to Exhibit No. 13, Table 3, pages 1 through 4, lines 1 and 2. This exhibit does not make clear

the source of the percentages shown on those lines. I should therefore like to make the following explanation: The rail cost formula, Form A, introduced by myself as Exhibit 4, [fol. 339] was first applied, treating the entire United States as a system, and using the total operating expenses, rent and taxes. The source of the data used is shown in Exhibit 2, page 72, footnote 1. The formula was then reworked for the United States as a system based on the out-of-pocket operating expenses, rent and taxes. The out-of-pocket portion of each account is shown in Exhibit 2, Table 19, page 33. The ratio of the out-of-pocket expenses to total expenses was computed for each expense group listed in Schedule H of the formula. The ratios were next carried forward to line 2 of Table 3 of Exhibit No. 13. The constant portion of the expenses shown in line 1, was computed by subtracting the out-of-pocket percentages from 100. I next have two corrections to make in the exhibits. The first is Exhibit No. 12. If you will refer to Appendix G, Table 2——

Q. What page of the exhibit?

A. Appendix G, at the end of the study, Table 2, page 13 of 13 pages, footnote 1. If you will refer to the third line of the footnote, it states there that the summation of y is the sum of the quotients of Column 4 divided by Column 2. That should read: Column 3 divided by Column 1. Subsequent to the setting up of the footnote, there was a change made in the column numbers which was not carried into the footnote. In the fourth line the statement of the summation of x is given as the sum of the quotients of Column 3 divided [fol. 340] by Column 2; and that should read—Column 2 divided by Column 1. I should next like to refer to Exhibit No. 13, Table 4, page 2 of 12 pages. The last paragraph on this page should have "Footnote 11" inserted in front of it.

By Commissioner Aitchison:

Q. You can prepare, can you not, Dr. Edwards, a little statement that can be mimeographed, which will embrace these various corrections which you have indicated?

A. I am sorry, Mr. Commissioner, but I did not quite hear that.

Chairman Aitchison: Read it, please.

(Question read.)

A. Yes, sir, I can. We did not find these until we were going over our exhibits last night.

Chairman Aitchison: It would be more convenient if you did that, and then it can be distributed.

The Witness: Very well.

Mr. McCollester: And may it be understood, if the Commission please, that we and the other parties to the proceeding may have access to Dr. Edwards' basic data for these new exhibits, at a reasonable time, to suit his convenience?

Chairman Aitchison: What basic data do you refer to, Mr. McCollester, that the parties have not already [fol. 341] examined?

The Witness: May I say, Mr. Commissioner, that there is practically no basic data involved in the computation of costs, which has not been introduced at this time, in our Exhibit No. 13 or our Exhibit No. 12, in the appendices.

Mr. McCollester: Well, whatever it is, Mr. Commissioner, may we have the understanding that we will be given an opportunity to see whatever computation were made, and whatever worksheets and basic data they are, at Dr. Edwards' convenience and that of his staff? We may not need to, but I think I must make that reservation, so far as my client is concerned.

Chairman Aitchison: You cannot make any reservation unless you say you are going to make an examination. Otherwise your motion is dilatory.

Mr. McCollester: If the Commission please, it is not my intention to delay this proceeding, but there is a mass of figures here that no person under the sun can read and comprehend in three days. I have worked on it, and I submit, in order that we may have the opportunity to comprehend it, and to meet it, if we differ with Dr. Edwards in the use of some of the basic data, we should reserve the right to see his basic data, to see whether he is wrong, or whether he is right. I submit that we are entitled to that opportunity. [fol. 342] Chairman Aitchison: We cannot reserve anything for anybody who will not say definitely that he wants to examine them.

Mr. McCollester: All right, Mr. Commissioner; I want the privilege, and I will say now, yes, that we do want to examine them.

Chairman Aitchison: Well, why did you not say so some time ago, then? Now, Mr. McCollester, you said something a few moments ago here that does not fit very well on this side of the bench, when you spoke of parties in Washington having been "tipped off." I hold in my hand a copy of the notice to the public and to the parties of record in this proceeding which was distributed by being placed upon the press table, in the usual way, which recites that the studies prepared by Dr. Edwards will be offered in evidence, and those particular studies were placed upon the press table, and that was on September 15th, 1942, one week ago today. In addition to that, the members of our staff carefully consulted the list of appearances, and every person who could be reached by telephone, without cost to the Government, was called, including, I believe, one member of your own staff——

Mr. McCollester: That is quite correct.

Chairman Aitchison: —and that was on September 15th, 1942, as I say. That was certainly not "tipping off" any-[fol. 343] body.

Mr. McCollester: Well, pardon me, Mr. Commissioner; I do not like to quarrel with you. I did not intend any offense, by what I said.

Chairman Aitchison: Your language, Mr. McCollester, certainly was offensive.

Mr. McCollester: Well then, I beg your pardon, if the Commission please. What I meant was that, so far as I knew, there was no written notice. It happened that I was in Washington the day following that circumstance, and Mr. Bell told me about it, and he had obtained copies of the exhibits, but I do think that, in a proceeding of the nation-wide scope of this proceeding, where I have associates in the case, in addition to myself, there should have been time, even on the 15th, for some mailing to be done, or at least for some mail notice to be sent to some of us who did not happen to be in Washington at that time. Now, I say again, if I have offended anybody, I apologize. That was not my intention.

Chairman Aitchison: I might also say that the gentleman who was in Washington, and was notified, had his appearance entered in this proceeding as your co-counsel, as I understand it.

Mr. McCollester: Yes, Mr. Bell was notified.

Mr. J. R. Bell: Just exactly what Bell are you talking [fol. 344] about?

Mr. McCollester: I do not know what more I can do, if the Commission please. I did not intend to say anything offensive, and if I did, I apologize. In using that language, I did not mean it to be offensive. I was merely trying to describe what my impression was of what happened, and not in any offensive sense.

Chairman Aitchison: I say again, when a notice is issued to the parties of record, and to the public, and the studies are placed upon the press table, that is not "tipping off" anybody. Please abstain from the use of such language in the future. Have you any further examination of Dr. Edwards, Mr. Smelker?

Mr. Smelker: Nothing further.

Commissioner Aitchison: Cross examine.

Mr. Plunkett: If the Commission please.

Chairman Aitchison: Mr. Plunkett.

Mr. Plunkett: On behalf of the Western Lines, we would like to defer our cross examination of Dr. Edwards until some later date, during this hearing.

Chairman Aitchison: Dr. Edwards, would it be possible for you to have the working papers, such as there were, which you used, transmitted here to Indianapolis?

The Witness: We have all of the working papers with us right at the present time, if the Commission please.

[fol. 345] Chairman: Aitchison: You could make them available here, then?

The Witness: Yes.

Chairman Aitchison: Let them be made available for Mr. McCollester's inspection, then; and please get together with Dr. Edwards, gentlemen, and decide on the time and place.

Mr. Eshelman: If the Commission please, our carriers would also like to join in the request of the Western Lines for an opportunity to cross examine on Dr. Edwards' new studies at some later time.

Chairman Aitchison: Does anyone care to cross examine at this time?

Mr. Bee: I have just one question, if you please.

Cross-examination.

By Mr. Bee:

Q. Dr. Edwards, in your original study, which I believe was introduced as Exhibit No. 3, you made some subdivisions as between Southwestern Territory and Western Trunk Line Territory. In your Exhibit No. 13, you have consolidated those, have you not?

A. Yes.

Q. Have you reached the conclusion, Doctor, that costs in the two territories are approximately identical?

A. I might say that the reason for consolidating the territories, is referred to, or given, in Exhibit No. 12, page 87. [fol. 346] It was, first, because of the time limitation; the reworking of this data required a great deal of time, particularly for the Western Railroads, where we had to split so many systems; and for that reason we did not rework it. In the second place, as I observed before, from Exhibit 3, it would be apparent that there is not a great deal of difference between the costs of the three territories in the West, namely, Southwestern, Western Trunk Line, and Mountain-Pacific, and the costs developed for the consolidation of those territories, namely, Western Territory as a whole.

Q. Then, as I understand it, you now treat everything west of the Mississippi River as one territory; is that correct?

A. We have in Exhibit 13, yes.

Mr. Bee: Thank you.

Mr. A. L. Reed: If the Commision please, speaking for the American Trucking Associations, we would also like to reserve the privilege of examining the data of Dr. Edwards that has been referred to, and we would also like to have the privilege of deferring our cross examination until after the rail carriers have cross examined.

Chairman Aitchison: You say, you want to reserve the privilege. Do you want to examine the data, Mr. Reed?

Mr. Reed: We do want to examine the data, yes, sir.

Chairman Aitchison: All right.

[fol. 347] Mr. Reed: But of course, your Honor, we will not know until we have had an opportunity to examine it, and have heard the cross examination of the rail carriers, whether we will care to cross examine Dr. Edwards or not.

Chairman Aitchison: Very well.

Mr. Reed: Thank you.

Chairman Aitchison: You will have the privilege of examining it.

Mr. Norman: If the Commission please, I assume that when Dr. Edwards is reintroduced for cross examination by counsel who have asked that they be permitted to cross examine later, examination by other counsel, representing other interests, will be permitted, if that is necessary. Am I correct?

Chairman Aitchison: I think it may be assumed, Mr. Norman, that we are going to conduct this hearing in the usual way, and endeavor to get all of the facts, and everybody who desires to develop the facts will have an opportunity to do so.

Mr. Norman: Well, it just seemed to me, your Honor, that everybody wanting an opportunity to cross examine Dr. Edwards later, should say so at this time; and if that is the idea, why, then I will state now that I would also like to examine him later, when he is recalled.

Chairman Aitchison: Well, in that event, Mr. Norman, [fol. 348] of course your cross examination would be limited to ground that had not already been covered. In other words, your examination would really be cross examination upon cross examination. If you have any cross examination of Dr. Edwards, you should either conduct it at this time, or show us some reason why you cannot.

Mr. Norman: Well, I am not prepared to go forward at this time, your Honor, for the same reason that all of the other gentlemen have expressed, namely, that I have not as yet had sufficient opportunity to analyze what Dr. Edwards has produced here in the way of new matter.

Chairman Aitchison: Well, Dr. Edwards will remain here for a reasonable period of time, and we will recall him at the proper time. Have you anything further, Mr. Smelker?

Mr. Smelker: Nothing further.

Chairman Aitchison: You may stand aside, Dr. Edwards.

(Witness excused.)

Chairman Aitchison: Have you any further testimony to offer, Mr. Smelker?

Mr. Smelker: Nothing further.

Chairman Aitchison: According to the notice of June 5th, 1942, we will now hear testimony of respondents. From whom will we hear first?

Mr. Gwathmey: Mr. Chairman, speaking for the Southern [fol. 349] Railroads, subject to the approval of the Commission, it has been agreed among us that, so far as the railroads are concerned, the Southern roads will proceed first, to be followed by the Eastern Lines, and then by the Western roads. We are prepared at this time to proceed with our rebuttal of the testimony which was offered at the St. Louis hearing, in accordance with the notice of the Commission. Our first witness, Mr. Chairman, will be Mr. B. F. Morris. I may say, we did not know just when he would be called, and I am not sure that he has his exhibits distributed. May I consult with him for just one moment, please. Mr. Morris informs me that a large number of his exhibits, and his accompanying statement, have been placed on the table in the hall, and if your Honor would take just a short recess at this time, so that the parties can go out and get them, I am sure that they will all be supplied.

Chairman Aitchison: Very well. We will be in recess for a few moments, then.

(A short recess was taken.)

[fol. 350] Chairman Aitchison: Gentlemen, please come to order. You may proceed, Mr. Grubbs.

Mr. Grubbs: If your Honors please, I think it might be well for me to say in a prefatory way, as the Southern railroads commence their presentation, that they take their stand squarely on the proposition that their present rates are the result of many years of earnest effort and experiment on the part of the Commission, the shippers and these railroads to adjust their rates to meet the needs of commerce; and that they do meet such needs.

To a very large extent, as we shall show, the maximum pegs have been fixed or approved by this Commission after full and assiduous consideration. This being so, the Southern railroads feel that they have every right to rely on the existing rates, many of which are under the maximum levels that have been fixed by the Commission or approved by the Commission as being reasonable and otherwise lawful. They are unacquainted with any shipper complaints of any consequence against such rates and as

to whatever complaint there may be against such rates, they feel, as they have earlier expressed themselves in this proceeding, that they are entitled first to hear the nature of that complaint before they undertake to meet it. Accordingly, we shall proceed now to show what we have and how we got it. Thereafter we are prepared to meet the [fol. 351] studies that have been presented by the witness offered by the Commission at the first hearing, namely, the studies presented by Dr. Stevens, Dr. Edwards and Mr. Jensen. I will call Mr. Ben F. Morris.

Chairman Aitchison: Raise your right hand and be sworn.

BEN F. MORRIS was sworn and testified as follows:

Direct examination.

By Mr. Grubbs:

Q. Will you state your name and address, please?

A. Ben F. Morris, Louisville, Kentucky?

Q. What is your occupation?

A. I am assistant to the traffic vice president of the Louisville & Nashville Railroad.

Q. How long have you been in the traffic department of the Louisville & Nashville Railroad?

A. 35 years.

Q. Briefly, what has been your work and experience in that department in that time?

A. Largely in the handling of rate adjustment matters.

Q. Will you outline briefly the positions you have held, Mr. Morris?

A. Prior to my present position, I was assistant to the freight traffic manager of our railroad for a period of [fol. 352] about ten years. Prior to that time I was engaged in the handling of matters for the traffic department before the Federal Commission and the State regulatory commissions. Prior to that time I served as chief clerk, assistant chief clerk and other positions in the general traffic department. During the period of 1928 to 1931 I was a member of the Fourth Section Committee of the Southern carriers which was engaged in the revision of the Southern commodity rate structure that followed the docket 13494 class rate revision.

Q. Are you familiar with the rates generally that have been maintained by the Southern railroads?

A. I believe I am.

Q. Are you acquainted with the history and development of such rates?

A. Yes, sir.

Q. Have you made a special study for the purposes of this case revealing the history and development of such rates?

A. I have.

Mr. Grubbs: May this be marked for identification as the next exhibit, Mr. Chairman?

Chairman Aitchison: It will be marked for identification as Exhibit No. 15.

(Exhibit No. 15, Witness Morris, marked for identification.)

[fol. 353] By Mr. Grubbs:

Q. Mr. Morris, will you explain briefly what Exhibit No. 15 is?

A. Exhibit No. 15 is a description of the Southern rate adjustment which consists of 30 pages with six appendices.

Q. The first 30 pages constitute a narrative statement of the history and development of the rates, is that correct, Mr. Morris?

A. That is correct.

Q. That narrative is supported by appendices A to F, inclusive, which are statements of rates and the like?

A. That is correct, and the appendices are referred to in the narrative as they are reached.

Q. In short, this book, or this exhibit, tells what the Southern railroads have and how they got it, is that correct?

A. That is the purpose of the exhibit.

Q. Is there any further statement you wish to make concerning it?

A. Except to correct one or two typographical errors I found in the exhibit since it reached Indianapolis yesterday.

Chairman Aitchison: Can you put those in the shape of a statement and then distribute copies of that statement?

The Witness: Yes, sir, I can.

[fol. 354] Chairman Aitchison: You need not take time with that, Mr. Grubbs, unless it becomes necessary to refer to some one of those figures in particular during the course of the witness' testimony.

Mr. Grubbs: Very well, Mr. Chairman.

By Mr. Grubbs:

Q. Is there any further statement you wish to make, Mr. Morris?

A. No, sir.

Mr. Grubbs: The witness is ready for cross-examination. I offer Exhibit 15 in evidence.

Chairman Aitchison: Exhibit 15 is offered in evidence. Do I hear any objection? (No response.) There being no objection, it is received.

(Exhibit No. 15, Witness Morris, received in evidence.)

Chairman Aichison: You may cross-examine.

Mr. Norman: Mr. Chairman, in view of the manner in which this evidence is put in, it is manifestly impossible to cross-examine the witness at this moment, because we have no idea what is in his testimony. His testimony, in the first place, consists of 30 pages of written matter which ordinarily, I take it, would be oral testimony. Then there are those appendices and exhibits which we have had no opportunity to examine. We therefore would like a later opportunity to cross-examine the witness.

[fol. 355] Chairman Aitchison: Will you be available here, Mr. Morris?

The Witness: Yes, sir, at any time.

Chairman Aitchison: You may stand aside then, with the understanding that you will be subject to call, and a reasonable opportunity given to counsel to examine your statement and then recall you for cross-examination.

(Witness excused.)

Chairman Aitchison: Is that all, Mr. Grubbs?

Mr. Grubbs: That is all of this witness, your Honor.

Chairman Aitchison: Do you have other witnesses?

Mr. Grubbs: We have several other witnesses. Mr. Gwathmey will call the next witness.

Chairman Aitchison: You may proceed, Mr. Gwathmey.

Mr. Gwathmey: Mr. Chairman, I would like to call Mr.

J. G. Kerr. Mr. Kerr has several exhibits and a prepared statement. They were distributed at the same time that Mr. Morris' exhibits were distributed, and in the same way.

Mr. McGehee: No.

Mr. Gwathmey: Just a minute, please. I am now informed, Mr. Chairman, that the witness was unable to make that distribution.

Chairman Aitchison: Off the record.

(Discussion outside the record.)

Chairman Aitchison: At this time we will suspend until [fol. 356] two o'clock P. M.

(At 12 o'clock M, recess taken to 2 o'clock P. M.)

[fol. 357] Afternoon Session

The hearing was resumed pursuant to recess.

2 P. M.

Chairman Aitchison: Come to order please. You may proceed, Mr. Gwathmey.

Mr. Gwathmey: Mr. Kerr.

J. G. KERR was sworn and testified as follows:

Mr. Gwathmey: Mr. Chairman, Mr. Kerr has several exhibits. He also has a prepared statement. Copies of both his exhibits and his statement have now been duly distributed to the members of the Commission, opposing counsel and the reporter, in accordance with the requirements of the new rules of practice of the Commission. With the approval of the Presiding Officer, I am going to ask that Mr. Kerr be permitted to make his statement orally, for the record; and then that he be cross-examined at this time.

Chairman Aitchison: Off the record.

(Discussion outside the record.)

Chairman Aitchison: Back on the record. Proceed.

Direct examination.

By Mr. Gwathmey:

Q. Mr. Kerr, will you please proceed to state your qualifications to testify in this case, and then submit such statement as you have prepared and desire to submit.

[fol. 358] A. My name is Joseph G. Kerr; Atlanta, Georgia. I am Chairman of the Southern Freight Association, and have been for five and a half years. I am also Chairman of the Traffic Executive Association—Southern Territory, and Chairman of the Executive Boards of the Southern Classification Committee and the Southern Passenger Association.

During the period 1903 to 1935, I occupied various clerical, supervisory and official positions with the traffic department of the Louisville & Nashville Railroad at Louisville, Kentucky, except for a period of one and a half years during 1918-1920 when I was assistant to the Director of Traffic, United States Railroad Administration, at Washington. From 1923 to 1935, I was assistant to the Traffic Vice President of the Louisville & Nashville Railroad. During the years 1935 and 1936, I was assistant to the Vice President in charge of traffic of the Association of American Railroads, at Washington, D. C.

My traffic experience has been broad and varied, much of it of an analytical character. I am not a statistician or cost expert, but over a long period of years have been familiar with the statistics of railways as covered by the Commission's reports. I feel that I know what they are intended to and do portray, and their value in freight rate making, after making due allowance for the fact that aver-
[fol. 359] ages are generally derived from unlike things especially as concerns one territory as compared with another, and after making allowances for many other factors which affect an intelligent use of such averages.

The purpose of this evidence is to rebut statements presented to the effect that studies made indicate that the costs of moving traffic in the South are lower than in Official Territory, and even if such statements were true same cannot be given practical application in fixing rates on classes or commodities to, from, and between points in the South.

I have used 1939 statistics because they are those used by Dr. Edwards in this proceeding. Comparisons I have made for other years develop substantially the same wide difference in composition of traffic and other conditions between the Southern Region and Official Territory.

It is understood, of course, that the Edwards cost study, as stated on page 1 of Chapter 1, "does not reflect those factors which occasion differences in rates which cannot

be justified under a strict adherence to a cost of service principle," "such factors including the value of the service, ability to pay, value of the commodity, competitive relationships, degree of manufacture, etc.," also that as stated on page 2 of the same chapter, "rate making, like [fol. 360] all forms of price fixing, is in part an economic problem and not merely an engineering or accounting problem • • •"

In the main, the rate structure of the South, as well as in other sections of the country, broadly reflects the circumstances and conditions, economic and otherwise, surrounding the movement of each kind of traffic, from each origin to each destination individually and in general relationship to other origins and destinations, and in reasonable relationship to competitive commodities. It recognizes within reasonable limits the principle of what the traffic will bear and move freely.

An intelligent rate-maker is well informed regarding the average receipts and costs per ton-mile and car-mile. In the light of these averages, produced by many different commodities transported under a great variety of conditions, the rate-maker must weigh all factors connected with the particular traffic in mind, including the length of haul, character of equipment, the character of the commodity, the service required, the empty haul usually involved, probable loading, the gathering or distributing service, and many other factors requiring the use of "common sense and informed judgment" and decide as to the measure of the rate at which the traffic may be profitably undertaken. [fol. 361] The factor of "value of service" is an important one in transportation. Some traffic cannot possibly move other than on basis of lower charges than the average but still will yield more than the out-of-pocket cost. If such traffic is not taken on then the remaining traffic must be called upon to support the plant.

In connection with other traffic, much higher than the average may be charged and not result in unreasonable rates. This is particularly true as to those high-grade commodities on which rates in the South reach as much as 39 per cent greater than in Official Territory for a given distance.

The problem really is that a railroad with a plant constructed to transport a great volume of traffic of many

different kinds and under widely varying conditions, faced with the necessity of meeting certain expenses which do not directly fluctuate with volume, must distribute that cost, together with that directly attributable to transportation itself, over all of its traffic (freight, passenger, express and mail) in such a manner as to permit the traffic to move freely and produce revenues in the aggregate adequate to meet all expenses and if possible yield a reasonable return on the investment.

The claim that class and other southern rates should be no higher than those applicable within Official Territory [fol. 362] is usually predicated on the contention that the average ton-mile earnings and average so-called "unit costs" in Southern Territory as developed from the Interstate Commerce Commission's statistics are but little in excess of those developed for Official Territory or as claimed by the Edwards and similar cost studies the unit costs are less, but these claims largely ignore the fact that the volume of traffic in Official Territory is very much greater than that available to Southern carriers; that the average number of tons per car, the average number of cars per train, are very much greater in the North than in the South; that the average hauls are entirely dissimilar being much longer in the South than in the North; and that the volumes of the several kinds of freight particularly high-grade well-paying freight, are very different in the North from those in the South.

By Chairman Aitchison:

Q. May I interrupt you there to ask if by the "North", you mean Official Territory?

A. Yes, sir.

Chairman Aitchison: Continue.

The Witness: In other words, the composition of traffic and the distribution of the so-called transportation burden as between commodities in the South are very different from those found in Official Territory, and this different distribution or composition of traffic is brought about by [fol. 363] very different conditions.

Where some allowance is made, as in the Edwards study, for differences in aggregate volumes, or differences in classes of traffic according to classes of equipment, etc.,

there still remains the fact that the averages are produced by wholly unlike things one territory versus another or even one carrier versus another.

On many commodities, some of which are peculiar or which move under conditions peculiar to the South, the rates are either lower, approximately the same as, or but little higher than those applicable within Official territory, and these commodities make up a considerable portion of the traffic transported by southern railroads. In this connection, there may be mentioned, lumber, logs, lime, sand, gravel, and crushed stone, brick, etc. Generally speaking, economic and other conditions will not permit of any higher rates, relatively, to be carried on such commodities.

There is a maximum limit beyond which southern lines may not go in connection with rates on many commodities, particularly low-grade and heavy-loading products of mines, some low-grade manufactured products, low-grade raw materials, logs and other products of the forests, and on agricultural commodities. These articles form a considerable part of the total tonnage of southern lines, and [fol. 364] with these limitations on revenues, as represented by rates, fixed by conditions largely peculiar to the South, the residue of the traffic consisting of the higher grade tonnage generally moving under class rates or commodity rates closely related thereto must, of necessity, be looked to, to contribute the remainder of the necessary aggregate revenue.

The amount of so-called high-grade traffic which can carry relatively high rates is exceedingly limited in Southern Territory both in number of tons and in relation to the total traffic available, but it is very important to southern carriers as concerns its contribution to aggregate revenues. On the other hand, the number of tons of this high-grade traffic available to Official Territory lines, either in tons per mile of road or in relation to total traffic, is very much greater than is the case in the South, so that it follows that in Official Territory this class of traffic is not called upon to shoulder as great a share of the total transportation burden as is the case in Southern Territory, and this unquestionably accounts for the fact that the northern carriers are in a position to operate a lower relative class-rate or merchandise level than are the southern carriers.

With such a wide diversity of traffic densities, distri-

bution or composition of traffic and revenues as between [fol. 365] commodities, competition and commercial conditions, and other factors, as between the South, on the one hand, and Official Territory, on the other hand, together with the limitations referred to, there will be found the explanation of, and the absolute necessity for maintaining, the relatively high class rates and commodity rates on the higher-grade traffic in the South, as contrasted with the North and East, enjoying as the latter do much greater proportions and volumes of such higher-grade traffic.

Except that I do not agree that one can produce unit costs of value for rate-making purposes by averaging numerous unlike factors, I do concur in that part of the Edwards study on page 1 of Chapter I where he concedes there are other factors besides cost of service to be considered in rate-making, such as value of service, ability to pay, value of the commodity, competitive relationships, degree of manufacture, etc. Dr. Edwards went on to say that because of these factors some rates may be above the costs indicated and other rates may be below such costs, but on the average all traffic must earn the amounts shown if the carriers' revenues as a whole are to cover the elements of cost listed. As an abstract statistical proposition I do not disagree with the latter statement.

What Dr. Edwards says in this connection merely con- [fol. 366] firms what I have said, i.e., that while a straight line mileage progression of average unit costs—albeit averages of unlike things—may be built up, the rates on many commodities must necessarily—and due to many different factors—be below the average and those on many others above the average.

The point at which the level of rates on each class or each commodity will fall above or below the average cost line will, of course, vary with each such rate for any given distance, and also according to the territory. It will fall at different points for different carriers within the same territory. If, as is true, the kinds of traffic, their respective volumes, hauls, and other conditions, one territory versus another, are different, it is reasonable then to expect the respective general levels of rates to fall at different points above or below the average cost line.

It so happens that the composition of traffic in the South and the competitive and economic conditions there found are such that as to class rates and the rates applicable on many high-grade commodities, to meet the *the* revenue needs of the carriers the level of such rates is necessarily found farther above the average cost line than is the case in Official Territory.

Stated differently, the volume of high grade traffic in [fol. 367] Official Territory, which can stand relatively high rates, is so great as contrasted with that available to southern roads, that the revenues needed to round out aggregate revenues sufficient to pay all costs may be spread thinner over such traffic in Official Territory—in the shape of lower scales of rates—than is the case in Southern Territory.

Just so long as these very different compositions and volumes of traffic exist—and they cannot be changed by mere changes in rates—then there is no hope that southern carriers can profitably operate under class rate scales as low as those in Official Territory.

If there is justification for ignoring all of the factors which now result in distributing the transportation burden as between commodities and groups of commodities in Southern Territory and transferring the lower northern class rate level to the South, then the northern rate levels on lumber and logs, brick, and everything else should be transferred to the South and in the same disregard of the different economic and other conditions prevailing in the South, and yet it is known that the northern rate level on each class of traffic or each group of commodities would not fit southern conditions. In the end, there would not only be a rate system that did not fit the South and which would [fol. 368] not freely move its traffic, but the inevitable result seen would be complete bankruptcy for all southern railroads.

By Mr. Gwathmey:

Q. Mr. Kerr, it was your intention originally, as I understand it, to introduce eight separate exhibits.

A. Yes, sir.

Q. But you are agreeable to introducing them collectively, as a single exhibit.

A. Yes.

Mr. Gwathmey: May we have Mr. Kerr's Exhibit No. 16, then, consisting of eight pages, identified at this time.

(Exhibit 16, Witness Kerr, marked for identification.)

By Mr. Gwathmey:

Q. Will you deal with the exhibit itself then, Mr. Kerr, as No. 16, and each page separately, for the eight pages.

A. Yes, sir. My exhibit No. 16, consisting of eight pages, is a statement of selected freight and passenger service statistics, year 1939, of Class I railways, separately by regions or districts, the purpose being to show that these statistics or averages, Southern Region versus Eastern District (separately and including the Pocahontas Region) indicate there is no similarity between Official Territory and the Southern Region but, in general, the averages disclose conditions in the former are far superior to those of the South.

[fol. 369] By Chairman Aitchison:

Q. Are these figures taken directly from the statistics of the Commission, or are they a computation?

A. No, Mr. Commissioner, they are taken directly from the reports. Now, I was very careful to say that they are selected, but they were selected merely for the purpose of showing these great differences on individual items. There are other items in the statement which might have been added, and there are probably some here that might be excluded.

Q. These are all to be found in the Blue Book, then, are they?

A. No.

Q. Well then, what is the source of them?

A. Oh, pardon me, Mr. Chairman. I misunderstood your question. They were all taken from the Blue Book, yes.

Q. And they are to be found in the Blue Book, without computation, are they?

A. Yes, sir. Unless some method can be found to equate each and all of those so-called efficiency factors to a common basis or bases, average costs per ton-mile, one region as contrasted with another, are simply mathematical calculations derived from adding together a lot of unlike things, which each differ greatly in value as compared with the

other, and then dividing the result by some other factor or [fol. 370] factors.

Q. Is that not exactly what has been done on sheet 1 of the exhibit?

A. Yes.

Q. Then sheet 1 of the exhibit is subject to the same infirmity, as the Edwards study, is it not?

A. Yes, sir. The only thing is, as I see it, the Edwards study carries it a little further, and compounds objections to the averages shown in this exhibit, on page 1. A computation of "average rates per ton mile" or of "average costs per ton per mile" for use in measuring rates on a single commodity, selected groups of rates such as class rates, or the general body of rates, one region compared with another, involves the assumption that the average hauls of each group are approximately the same, that the freight traffic of each group consists of approximately the same kind of commodities and of approximately the same proportions of freight traffic of different kinds, that the manner in which the traffic is handled is the same, and that all other facts which determine rates and earnings on ton-mile and car-mile bases are the same, whereas, in fact, these elements differ widely as between the groups, and as between individual carriers.

The factors which control rates and earnings on ton-mile and car-mile bases and many other factors affect costs in [fol. 371] such a way that in the absence of a satisfactory showing of approximately similarity in all things which have a bearing upon such costs, in my opinion no one can say that average group freight unit costs of one territory are a proper measure of the same units of cost incident to particular classes of traffic one section versus another.

Page 2 of my Exhibit No. 16 is a statement showing for the year 1939, for each of the Eastern District Regions, the Eastern District as a whole and including the Pocahontas Region, and for the Southern Region, the relation in percentage of each important group or class of traffic in tons and revenue to total tons and revenue. The use of percentages shows the relationships far better than would the use of tons or revenues.

These comparisons develop no similarity whatever in the composition of traffic, one of these regions compared with another. The competitive and economic conditions surrounding the production and movement of most of these

commodities or commodity groups are vastly different, one section versus another, and the transportation itself is frequently very different in respect to types of equipment used, loaded versus empty hauls, direction of loads, lengths of hauls, loading per car and per train, and many other items that affect transportation costs and revenues.

It is simply impossible, in my opinion, to ignore all of [fol. 372] these factors and strike an average of unlike things as representing the cost of transporting a given commodity, any group or class of commodities, or traffic as a whole.

In this connection, the Edwards study itself apparently recognizes its own deficiencies in this respect.

On page 21, commenting on "comparisons based on the average net load obtaining in Southern and Eastern Territories", after stating that the average weight for traffic handled in box cars varies somewhat between territories, it is then said "in making comparisons it is not possible to base the costs for each territory on the average load for all commodities moving in box cars in that territory as the results would reflect not merely the differences in the unit costs of operation but also the differences in the cost of hauling unlike commodities." While the study goes on to suggest a procedure to overcome this difficulty, I cannot find where in computing the general average costs one territory versus another, the Edwards study has done other than to average unlike things in any one territory or in one territory versus another.

On page 22, the Edwards study in trying to explain away an excess cost Southern territory versus Eastern Territory on traffic customarily moved in gondola and hopper cars, says: "The reason for this unfavorable showing for the [fol. 373] South is the lighter average loading which in turn is occasioned by substantial differences in the character of the gondola traffic in each territory. The traffic moved in the South consists to a large degree of commodities which have like loading characteristics in each territory. On the other hand, the Eastern Territory has substantial movements of certain commodities such as ore which in the South not only move in a relatively smaller volume but also have a lighter loading." This was immediately followed by the significant statement: "Where the consist of the traffic is unlike to the degree here indicated the comparisons have limited significance."

The most remarkable thing about this gondola and hopper car traffic is the statement found at page 22 of the Edwards study, that "although the South's traffic is of lighter average loading, if handled first, in Southern Territory and secondly in the Eastern Territory, the average Southern cost would be 1 or 2 per cent below that for Eastern Territory. But, if one assumed that the consist of the Eastern traffic were moved first in Eastern Territory and secondly in Southern Territory, the result would indicate that the average cost for the South exceeded that for the East by about 7 per cent."

Again, on page 25, it is stated as to comparisons based on 50 ton loads in gondola and hopper cars, "the relatively less favorable position of the Southern Territory is ex- [fol. 374] plained by the relatively high per cent empty return for gondola and hopper cars reported by the Southern roads."

On page 36, it is conceded that very substantial variations exist in the costs for individual railroads within a territory, and although the cost comparisons were based on identical lengths of haul and identical loads, the variations found between carriers in every territory ranged from 10 to 15 per cent, and that the differences in per cent of empty return movement were not great enough to account for more than a very small portion of the differences in costs between carriers.

In a case involving divisions of rates on citrus fruit from Florida to Official Territory, 194 I. C. C. 758, the Commission said Products of Mines and Manufactures and Miscellaneous carload traffic are "categories commonly considered to include commodities affording the best financial return." I concur wholly in that statement.

Page 3 of my Exhibit No. 16 compares the Eastern District and Pocahontas Region with the Southern Region, Products of Mines and Manufactures and Miscellaneous traffic combined, in tons and revenues in percentages of the totals and per mile of road.

The same character of information is shown as to Products of Agriculture and Forests "which are less desirable [fol. 375] from a revenue standpoint."

This exhibit also shows the average number of tons per car originated for the Eastern District, Pocahontas Region and Southern Region, separately as to each carload commodity group.

Page 4 of my Exhibit No. 16 is a graph showing this same information and permits of better visualization.

Even assuming that Dr. Edwards' study is correct in its finding that the average unit cost per ton-mile in the South is less or at least no higher than that in the Eastern District, in my opinion this contention is incorrect, and disregarding the fact that such unit costs are derived from unlike things and that the average hauls in the two sections are wide apart, such unit costs could not safely be used in measuring the reasonableness of individual rates, groups of rates, or general levels, one section versus another, for the reason that the compositions of traffic from which the aggregate revenues are produced are wholly different as is shown by these pages of my Exhibit No. 16.

While there are some items such as brick, fertilizer, and cast iron pipe in the Manufactures and Miscellaneous carload group which take rates in the South no higher than those in the Eastern District, that group is very largely made up of commodities as to which the southern rates are [fol. 376] higher mile-for-mile than the Eastern District rates. Many of the rates on these commodities are either class rates or are closely related thereto in both the Southern Region and Eastern District. They are the commodities which are called upon in all territories to assume a greater share of the transportation burden than other traffic.

In 1939, 29.6 per cent in tons and 41.4 per cent in revenue of the Eastern District's traffic was made up of this relatively high-grade well-paying tonnage. Including the Pocahontas Region the figures are 26.9 and 37.8, respectively. These are contrasted with 27.2 per cent in tons and 34.7 per cent in revenues for the Southern Region. Six or seven percentage points in total revenue is a tremendous difference.

Q. Somewhere in your testimony are you not going to detail what these other commodities are?

A. I do not believe I understand, Mr. Commissioner.

Q. Well, you have been talking about brick, fertilizer, and cast iron pipe in the Manufacturers and Miscellaneous group, taking rates in the South no higher than those in the Eastern District, and then you speak of commodities on which the rates in the South are higher mile for mile than the Eastern District rates, and then you drop down a few lines and say that they are the commodities which are called [fol. 377] upon in all territories to assume a greater share

of the transportation burden than other traffic. Now, I am asking you, are you going to tell us what those commodities are?

A. I was talking, Mr. Chairman, about the commodities in the Manufactures and Miscellaneous Group according to the statistics of the Commission.

Q. All of them?

A. No, sir. I said, there are certain commodities, such as brick, fertilizer and cast iron pipe, where our rate level is no higher than that in Official Territory; but for the most part, on the commodities within the Manufactures and Miscellaneous Group, using your own classification, our rates in the South are higher than those in the North and East.

Q. Well, that is as much of a breakdown as you intend to make of that statement, is it?

A. At this time, yes, sir.

Q. All right.

A. I could go to other commodities, now, in other groups such as Products of Forests——

Q. No. I am taking now about the particular statement here, wherein you make this generalization about the class rates on commodities in the Manufactures and Miscellaneous group being higher in the South than in the Eastern District.

[fol. 378] A. I do not intend to go any further than I have as to that, no, Mr. Chairman, because I have said that for the most part the rates are higher in the South than in the North and East,—and I frankly admit it—ranging from a very small percentage up to approximately the difference that you find in the first-class rates themselves. Some of them are quite difficult to compare, because the difference in one mileage block may be quite different from the difference found in connection with another mileage block. For instance, we have a mileage scale on iron and steel in the South which is not directly related to our first-class rates at all, but the general level of the scale is higher than the scale of iron and steel rates in the North and East. I use that merely for the purpose of illustration. May I proceed?

Q. Yes, although I am going to interrupt you again, in just a minute.

A. Pardon me; I did not hear.

Q. I say, yes, go ahead, but I am going to interrupt you again in a minute.

A. While the Eastern District had only 2.4 percentage points greater Manufactures and Miscellaneous C. L. tonnage, this produced 6.7 percentage points greater revenue, this notwithstanding the shorter haul of the Eastern District.

Q. As to this relatively high-rated, well-paying tonnage, [fol. 379] you are not going to give us any better description than you have?

A. As a witness, I am not, no, Mr. Commissioner. Somebody else may do it, but I am not.

Q. Well, you have got it down pretty well. You must have had something in mind, in figuring out these precise percentages, both of tons and revenues; you must have had certain commodities in mind. Now, what were they?

A. Why, I took the Commission's own classification, its own group of commodities, the Manufacturers and Miscellaneous group.

Q. Well, why could you not say so at first, then?

A. It is Commodity Group No. 840.

Q. Well then, we can interpret the statement "In 1939, 29.6 per cent in tons and 41.4 per cent in revenue of the Eastern Districts traffic was made up of this relatively high-grade well-paying tonnage," as simply referring——

A. To 840.

Q. —to Group No. 840.

A. Yes, sir.

Q. But in the preceding paragraph you appear to have taken certain items out of that list.

A. No, Mr. Chairman. I simply have called attention to a few of the items in the list on which I think all of us know, without any specific statement, that the rates in [fol. 380] South are no higher than these in the other groups. For example, the Commission itself, on cast iron pipe, prescribed exactly the same scale of rates in the South as in Official Territory.

Q. Well now we are still talking about this same group, Manufactures and Miscellaneous; and what I want to know is, if you take out the rates which are in the South no higher than those in the East, how, then, would the tonnage and revenue in the case of the remainder, compare?

A. The percentages in favor of the East would be increased—that is, the relative position would be increased.

Of course, the actual figures themselves would be decreased.

Q. But you have not computed them?

A. No, sir. However, Mr. Commissioner, on page 2 of my exhibit you will find substantially the same information by individual commodity groups, and I have done pretty much the same thing as I did here. I have grouped certain iron and steel articles only for the purpose of shortening up this statement. In other words, as to iron and steel articles,—and that is typical of a number of others—I have shown opposite iron and steel articles the totals for Groups 491, 500, 511, 512, and 513. Now, the Eastern District roads had an average of 4,328 tons per mile producing an average of $10,264 per mile of such traffic as compared with only 1,486 tons per mile and $4,079 [fol. 381] per mile for the Southern Region, or substantially less than 50 per cent as much.

The Eastern District lines had almost three times the volume per mile of road of this high-grade traffic over which to spread that part of the total transportation burden, than was the case with the Southern roads, and it undoubtedly accounts for their ability to operate a rate level on such traffic lower than can be operated in the South.

Exact coal rate comparisons are difficult, but it is generally agreed that on the whole, rates on coal from and between points in the South are on no higher level than those in the Eastern District. On many products of mines, Southern rates are lower, some of them substantially less, and the traffic is less desirable than is the same traffic in Official Territory.

The Eastern District roads had an average of this desirable traffic of 58.1 per cent of total tons and 34.9 per cent of total revenues, as contrasted with averages of only 46.4 per cent and 23.7 per cent, respectively, for Southern roads. The Eastern roads enjoyed 8,497 tons per mile and $8,639 per mile, as compared with but 2,533 tons and $2,784 per mile for the Southern roads. When the Pocahontas Region, over which the Official Territory basis of class and general commodity rates is operated, [fol. 382] is consolidated with the Eastern District, the comparisons are even less favorable to Southern roads. If the coal originating on the Illinois Central in Illinois and on the Illinois Central and Louisville & Nashville in Kentucky near the border and moving in tremendous

volume to northern points, and which is not generally spread over Southern lines, could be eliminated the showing would be even less favorable to the South. This particular coal tonnage had the effect of greatly depressing the unit cost averages found in the Edwards study for the Southern Region. Under the Edwards study, the cost of handling this particular traffic is just lumped with the Southern Group. Now, I think I should qualify that, because I am not certain that Dr. Edwards included the Illinois part of the Illinois Central and the Southern Group. Public policy, economic and competitive conditions demand that rates on agricultural products be kept on the lowest possible basis. That Southern roads are more heavily dependent upon this class of traffic is indicated by the fact that of the Eastern District roads' total traffic and revenues in 1939, only 6.6 per cent in tons and 8.7 per cent in revenue was of products of agriculture, while Southern roads depended upon it to the extent of 10.8 per cent in tons and 17.7 per cent in revenues.

Products of forest, particularly lumber, logs and pulp- [fol. 383] wood, represent a group upon which Southern roads are heavily dependent, indicated by the fact that it represented 11.4 per cent of total tons and 9.4 per cent of revenues in 1939. On the other hand, the Eastern District roads were dependent only to the extent of 2.4 per cent in tons and 2.8 per cent in revenues.

Taking Agricultural Products and Forest Products together, Eastern District roads not only do not have to depend so heavily as the Southern Region on this less desirable traffic for aggregate revenues, but they have available far greater proportions of the more desirable Mines and Merchandise and Miscellaneous carload tonnage than have the Southern roads. Southern carriers are largely dependent upon agricultural and forest traffic and have little opportunity to recoup a deficiency in profit upon such traffic by recourse to higher rates upon other kinds.

Hauls of 176 and 204 miles, Official and Southern roads, respectively, represent the approximate average hauls of all traffic per road per region in 1939. A shipment may be hauled 400 miles in the South over 2 roads, each transporting it 200 miles. Two 200-mile hauls enter into the general average of 200 miles and not a haul of 400 miles. The average haul per shipment per region is unknown.

We know that the average haul per shipment moving [fol. 384] interterritorially between Official and Southern Territories is approximately 700 miles, divided 300 north and 400 south. I might say there, Mr. Chairman, that that was the result of very elaborate studies which we made in connection with the Interterritorial Divisions Case 24160. The average haul per shipment in the North is probably somewhere between 176 and 300 miles, and in the South between 204 and 400 miles.

If it is true, as claimed by the Edwards study, that the cost of transporting carload freight in the South, per gross ton or per car mile, including or excluding so-called L. C. L. deficiencies and passenger deficiencies, and allowing for differences in investments, is almost invariably less—sometimes substantially less, than in the Eastern District regions, the Southern roads with their admittedly higher general level of freight rates mile-for-mile should have produced over a long period of years substantially greater rates of returns than the Eastern Districts roads, but such is not the case.

By Mr. Gwathmey:

Q. May I interrupt you there, Mr. Kerr, to ask you this question: Are you referring at this point to the studies which were submitted by Dr. Edwards at the St. Louis hearing?

A. Yes.

Q. And to those studies exclusively?

[fol. 385] A. Yes, sir. I have had no opportunity personally of examining what has been put in here today.

Q. Continue.

A. Mileage scales and other rates generally grade down (rate of progression) as the distances increase—this on the theory that the influence of origin and destination terminal expenses, and the cost of transportation, decrease as the hauls increase. Competition in connection with long hauls also has something to do with it.

In 1939, the average hauls per road per revenue ton-mile were 161 miles Eastern District (176 miles Eastern District including Pocahontas Region), and 204 miles Southern Region. Admittedly, the actual hauls per shipment per region are somewhat greater, but these figures may be used as approximately representing the ration South versus Official Territory.

The present first class rate excluding the Ex Parte 148 increase,—and I do that all the way through—in the South for 204 miles is 114 cents per 100 pounds, equal to 11.12 cents per ton-mile. The present first class rate in Official Territory (Eastern District) for 161 miles is 76 cents per 100 pounds, equal to 9.44 cents per ton-mile.

By Chairman Aitchison:

Q. Does that include the Pocahontas Region?

A. No, it does not, in that case. While it may be true [fol. 386] that the first class rates of the South average about 39 per cent higher for any given distance than the Official Territory rates, it is obvious that the ton-mile revenue of Southern lines for the average haul of 204 miles is only 18.3 per cent higher than that of the Official lines for their average haul of 161 miles.

Q. As related to first class?

A. That is first class entirely, yes, sir. Incidentally, I might say, I do not accept the statement at all that the average level of class rates as prescribed by the Commission in 13494, for the South, is 39 per cent higher than the Official Territory level, because that fails to take into consideration the different relationships to first class, and the fact that, speaking now in percentages of first class rather than numbers, the relationship in one territory may be different from that in another. We have a good many commodities in the South at the present time, that are rated third class less than carload, that are rated first class or second class in Official Territory, so it is perfectly obvious that the first class itself does not depict the relationship between the two scales. Then again, I have seen some figures—I think the Tennessee Valley Authority has gotten them up, and perhaps they will be put in here—where they weight all of the different ratings, the number of ratings in each class, to [fol. 387] get the percentage per hundred pounds. Well, that is just averaging a number of unlike things, because that gives little or no weight—I would say no weight to the different volumes of traffic that are rated first class, second class, third class, and so forth. That is just counting up a lot of numbers, and averaging them. However, I am frank to admit, I do not know how you are going to get it exactly. The traffic is so unlike that I just do not think that you can average it.

To again illustrate, and again using average hauls per road for convenience: The first-class rate (excluding the Ex Parte 148 increase) under the eastern class rate scale for 161 miles is 76 cents equivalent to 9.44 cents per ton per mile. Under the same eastern scale for the average haul of 204 miles in Southern Territory the rate would be 83 cents, or equivalent to 8.14 cents per ton per mile. As the ton-mile revenue for the respective average hauls is 16.0 per cent greater in the East than in the South, it would require a class rates cale in the South approximately 16 per cent greater than the Eastern scale in the South approximately 16 per cent greater than the Eastern scale to even produce the same average ton-mile revenues.

If one should use average hauls per shipment for both the North and South based 50 per cent higher than the [fol. 388] average hauls per shipment per road, we would get substantially the same results, that is to say, based on averages, a class rate scale about 16 per cent higher than the eastern scale would be necessary for the South to produce the same ton-mile revenues as the eastern roads get out of their scale.

It must necessarily follow that the eastern class rate scale if arbitrarily transferred to the South merely because of some claimed similarity of alleged unit costs would produce lower revenue per ton-mile on the average southern class-rate shipment than the same scale would produce on the average eastern class-rate shipment. There is an assumption there that the kind of class rate traffic in the South is the same kind as that in Official Territory. I do not think that necessarily follows, however. From every test that I have ever made, and anything I have seen, based on my own experience of about 40 years, it indicates that our traffic moving on class rates in the South, or on rates closely related to first class, is of a lower grade than that moving in Official Territory.

[fol. 389] In 1939 the average revenue per ton-mile of the Southern Region was 10.15 mills, and the Eastern District was 10.30 mills, or fractionally higher than the South. For the Eastern District and Pocahontas Region combined, the average was 9.50 mills. Inasmuch as the Southern average hauls are longer and rates for longer hauls are generally less per mile than shorter hauls, it required a higher general level of rates in the South than in the East to produce such a result, although it is true that southern ship-

pers and receivers pay southern carriers no more per mile for transporting the average or composite ton than is paid by northern and eastern shippers to railroads in that territory.

The latter statement ignores the fact that the composite ton in the South is not the same as the composite ton in the East. The difference is so marked that the composite ton and, consequently, the average receipts per ton-mile, unit costs, etc., in the two territories are not things comparable to a degree as to justify, or to even suggest, the thought that southern rates should be reduced to the level of northern rates on the same articles. But, as I interpret the Edwards study, a ton is a ton regardless of commodity (except that commodities are grouped according to class of equipment used, length of haul, direction of movement, and many other factors which affect costs and revenues), except that [fol. 390] an attempt is made to work out cost scales graded according to distances.

If these costs are correct and rates generally, or on any commodity or groups, are to be made with more direct relation to such costs, then it is obvious that, if carried to a logical conclusion, instead of the general level of Southern rates being higher than that of the East, the Southern rates would have to be substantially lowered, and this in turn would produce lower average ton-mile revenue for Southern roads, when as a matter of fact these roads are today earning approximately the same average as the Eastern roads.

In my opinion the general rate level within the South is substantially higher than that in the North and East, commonly known as Official Territory. I have been misquoted on that kind of statement before, and lest there be any misunderstanding, when I refer to "general rate level within the South" I mean the general level of freight revenue produced by intraterritorial rates and by divisions of rates on interterritorial traffic, all kinds of traffic.

I base my opinion upon an experience of many years and upon other factors available to me. I am frank to admit that I know of no way by which the question may be determined with exactness, as the traffic of one territory is so unlike [fol. 391] that of the other as to composition, volume, length of hauls, average loadings, tonnage per train, etc., as to result in comparing unlike with unlike.

1. While no definite figures are available, such as we have point to the fact that the average rail haul in Southern

Territory is somewhat greater than that in Official Territory, probably in about the same ratio as developed by the respective average hauls per shipment per road.

2. On the whole, the traffic in the Southern Region appears to be of a lower grade than that of the Official Territory roads. I think that is well demonstrated by the previous pages of my Exhibit 16 which I have specifically referred to.

3. With average hauls longer in the South, and assuming a composition of traffic in the South similar to that of Official Territory, it would be reasonable to expect to find lower average ton-mile revenues in the South, whereas we actually find such revenues to be substantially similar in the two territories over a long period of years. Under any given rate scale, the longer the haul the lower the ton-mile yields. The lower the grade of traffic on the average, the lower would be the ton-mile average yield under any common system of rates. This result is not found here when you [fol. 392] compare the South with Official Territory, and the answer must be that the South's general rate level is higher.

4. Over a period of some years, the Commission's cost accountants and others have claimed that the unit costs—with or without returns on investments, have been less in the South than in Official Territory. During the same periods the "rates of return" of the Southern roads as a group have been less, although not invariably so, than those of Official Territory roads as a group. If as it is claimed, the unit costs in the South are so much lower and our general rate levels are so much higher, why is not the latter reflected in a rate of return for the Southern Group very much in excess of what the figures show?

These facts and results lead me to conclude that the so-called unit costs developed by the Edwards study, averages of unlike things, are of no value in measuring general levels of rates, and they cannot safely be applied in determining proper and reasonable levels of class or other rates one territory versus another.

Page No. 7 of my Exhibit No. 16 is a statement of selected traffic averages, year 1939, of the Louisville & Nashville Railroad and Southern Railway, both Southern Region lines.

It is preesnted solely for the purpose of demonstrating the substantial dissimilarity in traffic conditions frequently

[fol. 393] found as to individual large roads in the same general territory, yet Mr. Edwards' computations of average unit costs include the Louisville & Nashville, and Southern, as well as other Southern roads, as one mass or lump. I have previously called attention to the fact that Dr. Edwards' in his study conceded that the differences, one road versus another in that same territory run as much as 10 to 15 per cent.

Operating as they do in the same general territory, and serving many of the same large cities such as Evansville, Louisville, Cincinnati, Lexington, Knoxville, Atlanta, Decatur, Birmingham, Memphis, and New Orleans, and, either directly or in connection with other railroads, other southern cities, it is absolutely necessary that both roads observe generally the same bases of class and commodity rates, and without regard to differences in composition of traffic, traffic densities, or so-called unit costs.

The aim of both roads is to meet as nearly as may be possible the conditions they find in their common territory, and secure aggregate revenues sufficient to pay operating expenses, taxes, etc., and some return on their properties. In neither case is it practicable to determine a so-called unit cost based on past performance and use same as the yardstick for arriving at rates on the traffic transported by each road. Rates would not be produced responsive to [fol. 394] actual necessities.

When it comes to one territory versus another, such as South versus Eastern District, the situation may be and is very different, except where it is absolutely essential for competitive reasons, to establish interterritorial rates on particular commodities reasonably related to the destination levels, such as from the South to the North. Traffic and other conditions are different in the South than the Eastern District, and materially so. The two territories can and should be kept separate to the fullest extent possible, so that the rate adjustment on individual commodities or groups of commodities may reflect the actual conditions within each particular territory, to the end that traffic may move freely and in the aggregate sufficient revenues be produced to pay all costs and some return on investments.

Chairman Aitchison: You spoke of traffic and other conditions being different in the South than the Eastern District.

By Chairman Aitchison:

Q. What are the "other conditions" that you have in mind?

A. Well, the word "traffic" is pretty broad, Mr. Chairman, I admit. Take our Southern Territory: It is practically an island. Except for a few miles at the northeastern end, it is completely surrounded by navigable waters. [fol. 395] Great rivers permeate the territory and some more are being constructed. The Commission itself has found that rates within the South are affected by water competition to a greater degree than any other section of the country. That is one of the conditions.

Q. Those are not traffic conditions, are they?

A. Sir?

Q. Those are not traffic conditions, are they?

A. All right. We will go to another that is typical, one of the great products of the South, and has been for longer than I can remember, lumber and logs. A great market for lumber, southern lumber is in the North and East. If it is going to move there at all, it must move on relatively low rates. If they are going to manufacture this lumber, particularly at the interior points, they must have low rates on logs. In late years our lumber from the South in trying to find markets in the North and East has felt more and more the competition of competitive forms of transportation. That has resulted in a good many changes in our rates. The truck competition has had something to do with it.

Q. Are you speaking about competition in Eastern Territory?

A. I am talking about competition, particularly, within Southern Territory.

Q. In your original statement you said that traffic and [fol. 396] other conditions are different in the South than the Eastern District.

A. That is what I just got through trying to explain, Mr. Chairman.

Q. What competition would lumber meet in the South from other territories?

A. I spoke generally, as a whole, about lumber from the South to Official Territory, but answering your question specifically, we have a great deal of competition on Pacific coast lumber in the South.

Q. All right, but you were talking about traffic in the South.

A. In the South. In the South, Mr. Chairman.

Q. You said that traffic and other conditions are different in the South than the Eastern District. I am asking you what the "other conditions" are, traffic conditions, that you have in mind.

A. Well, I tried to explain——

Q. You did not answer me when you told me about an interterritorial movement. That is not within the South and is not within the East.

A. Mr. Chairman, my answer was certainly not limited to interterritorial traffic. I spoke of interterritorial traffic and also traffic within the South, particularly mentioning lumber, and also the truck competition that was found [fol. 397] within the South that made itself felt in a very low scale of rates on lumber as well as logs.

Chairman Aitchison: Well, I have been struck by the fact that you have gone over 20 pages of your statement here and have not referred to any competition with anything except rails.

The Witness: There is intense competition in our territory with water and trunk lines, and competition with other competitive commodities.

Chairman Aitchison: We know that.

By Chairman Aitchison:

Q. You say there are competitive conditions in respect to commodities in the South which are different than in the East. Now, what other conditions are there besides traffic conditions and competitive conditions different in the South than in the East which you had in mind when you made the statement you were just making when I interrupted you?

A. You may well include there economic conditions which can be coupled with your traffic and competitive conditions. For example, in the South we produce a tremendous volume of fruits and vegetables. Now, if those fruits and vegetables are going to be marketed in the great markets of the country, they must move on relatively low rates.

Q. Interterritorially?

A. That is an economic as well as a traffic or competitive [fol. 398] condition.

Q. Still you are talking about interterritorial rates.

A. I am not limiting it at all to interterritorial rates, Mr. Chairman. We serve a great many of these markets with our own rails such as St. Louis, Louisville, Cincinnati, Washington, Atlanta, Nashville and Memphis.

Chairman Aitchison: I understand that, but you are making a comparison here as shown by a statement that you have not yet read. We are trying to keep this in separate compartments. Read your next sentence.

The Witness: The statement I made, if I may be permitted to read it again, was this: Traffic and other conditions are different in the South than the Eastern District, and materially so. The two territories can and should be kept separate to the fullest extent possible, so that the rate adjustment on individual commodities or groups of commodities may reflect the actual conditions within each particular territory, to the end that traffic may move freely and in the aggregate sufficient revenues be produced to pay all costs and some return on investments. That statement certainly was not limited to interterritorial traffic. In fact, I had uppermost in mind our own intraterritorial situation.

Chairman Aitchison: That is what I am getting at, and that is what I have been asking you about. Every time I [fol. 399] asked you about your intraterritorial conditions that are different from the intraterritorial conditions in the Eastern District, you cited to me an interterritorial condition.

By Chairman Aitchison:

Q. I am asking you as plainly as I can with respect to the conditions, other than traffic, which are different in the south than in the Eastern District, and materially so. What are they? You have mentioned the fact you have competition, and I assume you mean competition is different in the South than it is in the East.

A. We have a different kind of traffic moving under different conditions.

Q. That is a traffic condition.

A. No. It is not a traffic condition. Take a very simple case——

Q. Take what?

A. Take a very simple case. Take cotton.

Q. What do you mean by "traffic conditions" there?

A. Well, the word "traffic" is used by different people in different sorts of ways.

Q. In what sense do you use it?

A. I would rather combine it.

Q. In what sense do you use it when you say that "traffic conditions" are different in the South than in the East?

[fol. 400] A. I used it in a rather broad sense.

Q. A broad sense in what way? How broad, and what is your conclusion?

A. I would include in it what other people do not include. They simply speak about a rate.

Q. Do you mean anything at all, when you say "traffic and other conditions" or do you mean just traffic conditions?

A. Mr. Chairman, other people interpret those terms in such a way that I generally include them all, but if you ask me what I regard as "traffic conditions," I will include the whole lot.

Q. The whole lot?

A. It embraces the lot.

Q. The whole lot are included under "traffic conditions"?

A. Everything.

Q. In other words, "other conditions" as far as you are concerned in that statement you read is just surplusage?

A. Just so everybody understands what I mean by "traffic conditions," that would describe it.

Q. Then when you speak about "actual conditions," you mean traffic conditions? I am referring now to the bottom line of your statement on page 21.

A. I would be embraced within "traffic" under that definition, yes, sir.

Chairman Aitchison: All right.

[fol. 401] The Witness: Now, may I go back to my cotton illustration?

Chairman Aitchison: It is all right with me.

The Witness: We have a tremendous volume of cotton moving within the South, produced and moving within the South. Now, it is a matter of common knowledge that Official Territory does not move any cotton. They do not produce any, nor does their rate adjustment mean anything. They

may have a few bales now and then from some port into the interior, but for all practical purposes they do not mean anything. Our rates have got to be made to move cotton between points in the South and from points in the South to other territories, and we ought not to be bound by what somebody else —.

Chairman Aitchison: Proceed.

The Witness: Returning to my statement, this necessarily means a difference in distribution of the transportation burden.

Conceding that the general level of Southern rates is higher than that of the East, and as it must be, and as the average ton-mile revenue of Southern lines for an average haul of 204 miles is practically the same as that of the Official lines for an average haul of 161 miles, and as the rates of return of Southern roads have not over a long period of years except for one or two years been in excess [fol. 402] of those of the Eastern District, it must follow that the cost of transporting freight in the South is greater for any given distance than that in the East and that, as found by the Commission in Docket 24160, the difference is not negligible.

The making of rates in general with direct relation to so-called unit costs would mean, if carried to a logical conclusion, different rates on the same commodity between the same points according to the railroad transporting, different rates in separate parts of the same general territory, or if all railroads in a given territory are to be considered as one mass, then on the same commodity there would be rates throughout the country differing only to the extent that there are proven differences in so-called unit costs. There would no longer be the opportunity for Southern roads, for example, to make rates on such commodities as cotton, fertilizer, lumber, logs, pulpwood, road aggregates, and a host of other commodities which fairly reflect the competitive and economic conditions peculiar to the South, if they are forced to reduce their class rates and those on other high-grade commodities to the Official Territory levels merely because some similarity in average unit costs may be claimed.

Conversely, the same similarity would seemingly demand that the Eastern rates on commodities such as I have [fol. 403] named should be reduced to the southern levels

even though there is no real necessity therefor. The lowest rate anywhere, regardless of the reasons for its existence, would apparently become the rate everywhere a similarity of so-called unit costs could be claimed. As such unit costs are derived from the mass of traffic without regard to kinds or volumes and many other conditions, it would seem that the same rates would have to be applied alike on all carload traffic, differing only in size according to loading and length of haul.

Page 8 of my Exhibit No. 16 is a statement showing the revenue effect on Southern Region roads determined by redistributing revenues on general groups of commodities on basis of average revenues per ton of Eastern District road as plussed 16 per cent to reflect the greater average haul of Southern roads.

Admittedly, a comparison of this kind requires the use of assumptions but no more violent than those of the Edwards study if those so-called average unit costs can be used in making freight rates, or in determining that the freight rates on classes or selected articles in the South should be no higher than those in Official territory.

I have shown that it would require a class rate scale in the South approximately 16 per cent higher than the Eastern District scale to produce the same ton-mile earnings, [fol. 404] assuming that the average haul per road in the South versus the East approximately represents the relationship of the average hauls per shipment in each district or region. For this reason I have figured that the average revenue per ton per commodity group in the South would have to be 16 per cent above the average revenue per commodity group for the Eastern District to reflect the longer Southern average haul under the same rate basis. This is a maximum figure for the purpose. The use of any lower percentage would greatly increase the measure of losses to the Southern roads shown in this exhibit.

The assumption here is that the same difference in average haul is used for each commodity group although common sense tells one that the average hauls per shipment in each district and region are likely to be radically different and that this is bound to be true as to many of the commodity items that go to make up such groups.

The assumption is not quite so violent when it comes to the grand total, for here at least there can be no question

but that the average haul per shipment per road is 161 miles Eastern District and 204 miles Southern Region, but what it is per shipment per district or region we not not know.

If, however, such unit costs as those claimed by the Edwards cost study can be used in arriving at Southern rates generally, or on individual commodities, then apply-
[fol. 405] ing that theory to our whole body of traffic, the Eastern rate levels if transplanted to the South would reduce our revenues based on 1939, $39,812,189 per annum, something unthinkable in my opinion.

Com. Splawn: Let me interrupt you right there, Mr. Kerr.

By Com. Splawn:

Q. How did you arrive at that $39,812,189?

A. The $39,000,000 plus?

Q. Yes. How did you arrive at that?

A. I simply determined the average revenue per ton in the Eastern District and plussed it 16 per cent to compensate for the longer average hauls. Now, that is subject to another criticism that runs all the way through, and that is that it includes duplications. There is an assumption here that the amount of the duplications are about the same in each territory.

Q. Do all the tons in each territory to be compared, involved in these procedings, move under the rates being investigated here?

A. That is certainly true, Mr. Commissioner, as to the South and Official Territory. There is some far western section that may be——

Q. Here is what I want to get clear: Do you mean that if the class rates in the East were applied on the traffic in the South which moves on class rates, the Southern roads [fol. 406] would lose $39,000,000?

A. No. I did not limit it to class rates. I took all traffic, sir.

Com. Alldredge: I have difficulty in following the figures in the last column on page 8 of your exhibit.

By Com. Alldredge:

Q. How do you get a $25,000,000 loss under the total of carload traffic when you show above there a loss of $20,-

000,000 on agricultural products and a gain on all of the other traffic?

A. You have anticipated my statement. It is that it just illustrates the absurdities of trying to apply these so-called unit costs derived from unlike things to fix freight rates, without regard to what we have in one territory versus another, and I would like to take each item because I think it is very interesting and right to the point.

Q. I do not see how you can arrive at a $25,000,000 loss when in the same column above that you have only one item of a loss, showing a loss of $20,000,000, and the other items show an appreciable gain. Then when you show the total, it is a loss of $25,000,000.

A. Take the individual groups: You cannot add together the gains and add together the losses and subtract the losses from the gains and get a net loss that corresponds to that which you obtain by taking the traffic as a whole. I say again that that well demonstrates one of the absurd [fol. 407] results you get when you try to give one of these formulas practical application in rate making. I am not condemning Dr. Edwards for that, because he very clearly points out in his own study that there are so many other factors that must be given consideration.

Q. I think I would have to look at this exhibit a little more to see if it is stated correctly.

A. Mr. Commissioner, all the base figures are there. It does look silly, but there it is. I have used the same plan as to each commodity group and as to the whole, and they do not add up to the same.

By Chairman Aitchison:

Q. It simply proves that there is a difference in the commodity consist in the two territories, does it not?

A. Of course, Mr. Chairman. My point is, I have indulged in no more violent assumptions in making that than the assumption that unit costs in one territory are comparable with those in another territory.

By Com. Alldredge:

Q. How did you find this last figure on that page?

A. The last figure?

Q. Yes.

A. The $39,000,000?

Q. Yes.

A. I just found the average revenue per ton in the East-
[fol. 408] ern District on carload and less than carload traffic. I plussed that by 16 per cent to compensate for the additional haul in Southern Territory. That is, the longer average haul. I also found what the Southern carriers actually received in revenue from all of the traffic. Then I deducted this estimated figure of $409,000,000 plus from the actual figure of $449,000,000 plus and I obtained a loss of $39,812,189.

Now, as Commissioner Alldredge pointed out—I do not think he got to actual figures,—but I would like to put into the record the fact that taking the individual fixed groups the losses total $46,475,899 and the gains total $19,792,314, or a net loss of $26,683,585, but the total loss on the grand total is $39,812,189. For example, applying that theory on products of mines, we would gain $10,219,018, in theory—products of forests, I should have said—we would gain $10,219,018, but if anybody would come down into that territory and tell us that we can increase our rates on forest products so that we could pick up $10,000,000, he would be——

By Chairman Aitchison:

Q. You tried to do it, did you not?

A. Not $10,000,000, Mr. Chairman. We reduced them.

Q. You wanted to get them up 10 per cent, did you not?

A. I do not know as we would have gained $10,000,000.

Q. As a matter of fact, the difference between the $26,-
[fol. 409] 000,000 and the $39,000,000 constitutes about two and a half per cent of the total revenue result, does it not?

A. My mind does not work that fast, Mr. Commissioner. I will accept your statement. The total revenue is approximately $450,000,000. The loss would be about $40,000,000.

Q. I am trying to figure out the difference between the $26,000,000 that you spoke about——

A. The $26,000,000 figure is not the figure to consider. The real and best figure I think is that $39,000,000 figure. That, as I figure it, is about 89 per cent of the total.

Chairman Aitchison: Proceed.

The Witness: Here is another interesting fact: While some of our southern state commissioners and governors, particularly, claim that our rate level on manufactures and miscellaneous, speaking as a group, is so much higher than the North, actually, if you apply this theory, we produce within $400,000 of the same revenue we get today. I believe that is all I have.

By Chairman Aitchison:

Q. This last page shows gross revenue, does it?

A. Yes, sir.

Q. I thought Dr. Edwards' statement related to cost.

A. Sir?

Q. I say, I thought Dr. Edwards' statement related to cost.

[fol. 410] A. I thought so too and I still think so, Mr. Chairman. I am just assuming here that the cost in the South is no greater than the cost in the Eastern District, the unit cost. If it is of any value in rate making, for rate making purposes, I am also assuming that that would justify a rate level in the South no higher than that in the North. I am trying to show, as best I can, the practical results of applying that formula. Certainly results are no good, in my opinion at least, unless you can give them practical application.

Chairman Aitchison: Have you anything farther, Mr. Gwathmey?

Mr. Gwathmey: Yes.

By Mr. Gwathmey:

Q. Mr. Kerr, was this exhibit which you have referred to, identified as Exhibit No. 16, prepared by you or under your direction?

A. Yes, sir.

Q. Are the matters and things set forth in that exhibit true to the best of your knowledge and belief?

A. Yes, sir.

Mr. Gwathmey: Mr. Chairman, we ask that the document which has been referred to and identified by the witness as Exhibit No. 16 be received in evidence.

Chairman Aitchison: Is there any objection to the receipt in evidence of Exhibit 16? (No response.) It is [fol. 411] received.

(Exhibit No. 16, Witness Kerr, received in evidence.)

Mr. Gwathmey: The witness is now tendered for cross-examination.

Chairman Aitchison: Mr. Norman.

Mr. Norman: I have a few questions, Mr. Chairman, a very few.

Cross-examination.

By Mr. Norman:

Q. Mr. Kerr, a number of times throughout your testimony you referred to the fact there are as great differences, perhaps, as between individual roads, as between the territories in composition of traffic, transportation conditions, costs and so forth, and you filed page 7 of your exhibit as illustrating that as between Louisville & Nashville Railroad and the Southern Railway. I will ask you first if those are not the two largest systems in the South.

A. Are you using that term "largest" in a broad sense, meaning tonnage, and revenues, as well as mileage? If you are, my answer is "Yes."

Q. That is the way I use it.

A. Yes.

Q. You say that it is absolutely necessary that both roads observe generally the same basis of class and commodity rates without regard to differences in the composition of [fol. 412] traffic, traffic densities, or so-called unit costs. Now, if that could be done within a territory as between the two greatest systems in that territory, in order that the shippers may be on an equal basis, why is it that it cannot be done where an arbitrary line is drawn across the country?

A. It could be arbitrarily done, if that is what you have in mind.

Q. No. I said, the only arbitrary thing is the line drawn across the country.

A. The line in my judgment is not arbitrary.

Q. Well, we will say, where a line has been drawn across the country, and we will leave out the word "arbitrary". Now, what is your answer?

A. A line has not been drawn across the country. They have a natural ending point for this group of railroads I represent. Of course, there is a little overlapping, but it is a perfectly natural one.

Q. There are some roads south of the line that have heavier density of traffic and better earnings than some roads north of the line, are there not?

A. That is true.

Q. We will leave out all discussion of the line, why it was drawn, or whether it is arbitrary or not, and I will ask you to answer my question as to why you can absolutely disre-
[fol. 413] gard these differences in composition of traffic, traffic density and so forth, as you have shown, as between the two greatest systems in the South in order that the same general system of rates may be maintained by both of them; and yet when you come to this line, you cannot disregard it at all.

A. The chief reason is that we would bankrupt within a few months every southern railroad. You asked a very broad question. I will call your attention to forest products, a commodity that you know a lot about, and you know you cannot operate on the Official Territory basis of rates on lumber and logs in the South.

Q. I do not know anything of the kind. You do not operate on the same basis, but I am not at all sure you operate any lower.

A. Well, I am.

Q. Is that the only answer you want to give to that question, about why you can disregard all of the traffic conditions, the composition of traffic and so forth as between the two greatest systems in the South, and yet when you come to disregard it because a line has been drawn for whatever reason, it cannot be done?

A. I thought you were going to drop this question of a line.

Q. No. I am not dropping it, I am asking the question as to why it was drawn.

[fol. 414] A. I think I very clearly stated why the Southern and the Louisville & Nashville Railroad operating in one common territory, serving the same points, or serving adjacent territory, must of necessity operate on the same level of rates.

Q. Then your answer is that the reason it can be done as between those systems is because it has to be done?

A. No.

Q. And the reason it cannot be done between the two territories is because it does not have to be done?

A. No. There are other reasons, Mr. Norman. I think you know them just as well as I do, and more so probably.

Q. Let's put them in the record.

A. It is going into the record.

Q. All right.

A. I am not talking off the record.

Q. All right.

A. You know that very well. Now, I have forgotten where I left off.

Q. Well, have you any other answer to make to that question?

A. I will say this, Mr. Norman: The more favorable situation on the Louisville & Nashville Railroad, as I stated, is influenced to a very considerable extent by the coal originating in southeastern Kentucky and moving very largely over one or two operating divisions to the Ohio River, [fol. 415] chiefly Cincinnati, and north. Now, you take the rest of the lines of the Louisville & Nashville Railroad, and the situation is not substantially different from that of the Southern Railway.

Q. When you go to get the totals——

A. One pretty nearly equalizes the other.

Q. When you go to get the totals of the results in revenue, you do have for the systems as a whole these differences shown on your page 7 which are as to everything, revenue per ton mile and per mile of road, railway operating income and so on and so forth; then when you come to the composition of traffic, you show how widely it differs, taking it as a whole.

A. Taking the great bulk on the Louisville & Nashville Railroad, you would not find very much difference between it and the Southern Railway. The trouble here, Mr. Norman, is that they take the Louisville & Nashville Railroad with all that tremendous volume of coal traffic, which pays a relatively low revenue, although it moves under very favorable conditions, and they put that all in the mess, put it all in the pot and stir it up with the rest of the South and pull out this average.

Q. You did worse than that. You took the Louisville & Nashville Railroad and with all of this volume of coal, you compared it with just one railroad. Now you are com-

[fol. 416] plaining because somebody else takes it and puts it in with all of the others.

A. Let me finish my answer, Mr. Norman.

Q. All right.

A. Then some people come along with an average arrived at, largely influenced by the movement of coal, and want to reduce class rates in Georgia, Alabama and so forth.

Mr. Norman: Well, let me ask you one other question.

By Mr. Norman:

Q. With respect to your figures, you plussed the rates in the South by 16 per cent because the haul in the South is 16 per cent greater than in the North. Is that right?

A. I did, yes, sir.

Q. In doing that, do you not assume that the expense increases in direct proportion to the increase in length of haul?

A. No, I did not. I did not use it in that sense at all. I said that it came out further in the rate base, using a first class for that purpose, as we produced lower ton-mile earnings. I think it would necessarily follow, speaking generally, that perhaps the cost would be a little bit less, but I say your first class rate and many of your other rates are far above 16 per cent. I simply used 16 per cent and explained how I got it.

Q. But you got it—I think you have to inflate a rate [fol. 417] to compensate for a longer haul, if you are going to produce like ton-mile earnings.

Q. Do you not inflate it in direct proportion to the increase in haul? You had a 16 per cent increase in haul, so you inflated the rate 16 per cent.

A. No. The average haul is longer than that.

Q. That was the way I understood you, Mr. Kerr. Perhaps I misunderstood you.

A. I think it is around 20 odd per cent.

Q. Then how do you arrive at the 16 per cent by which you inflate the rate?

A. I took the two average hauls and I took the two rates in the Eastern scale and the Southern scale, reduced it to a ton-mile basis and found what was necessary to add to one or the other.

Q. So you did——

A. In order to produce the same ton-mile earnings.

Q. You did it on a distance basis then?

A. Distance was the foundation, but it was not in direct relation to distance.

Mr. Norman: That is all.

Chairman Aitchison: Mr. Cotterill.

By Mr. Cotterill:

Q. In several places and in various language you assailed the suggestion, as you understood it that something exactly so or more nearly to a territorial rate parity on [fol. 418] merchandise traffic would be accomplished only in the way of reductions in your rate level. Why did you assume that, instead assuming that that parity, if it were required, should take the form of an increase in Northern Territory where their present rate level is failing to equal even the out-of-pocket cost.

A. Well, the Commission fixed both levels, Mr. Cotterill. I have heard no suggestion from the Eastern lines that their rate level will be increased. I do not know whether they are advocating it now. But I know—I may be anticipating you a little bit—that it is impracticable to bring up many of our rates to the Official Territory level, or some percentage above it.

Q. You said, bring up your rates?

A. Yes, bring up many of our rates.

Q. Is it your assumption that the inability to approach, if not accomplish, territorial uniformity, depends solely upon the absence of any present suggestion from the northern lines that their rate level be raised, or are you ignoring in that regard the presence of their rates in this proceeding subject to order of the Commission as well as your own?

A. Of course, if the northern class rates and the northern commodity rates should be increased above their present level, it would narrow the difference between the northern [fol. 419] levels and the southern.

Q. Yes.

A. That is self-evident.

Q. When, in your discussion of the matter, you merely assumed that that would not be done, it rested only upon the absence of anything you had heard from the northern lines?

A. Yes. I have not any idea that the level is going to be increased.

Q. Now, Mr. Kerr, interestingly, you have undertaken at some length to discuss the question of the extent to which in fact there is a dissimilarity in the consist of traffic in Official Territory and in Southern Territory and wherein that difference should be recognized in a determination of the rate levels in the two territories. I will first ask you to turn to sheet 5 of your Exhibit 16.

A. Yes.

Q. Considering manufactures and miscellaneous as at least typifying, if not embracing, what you call the higher grade traffic, it is observable that in terms of tons you show 29.6 as the percentage which the tons of manufacturers and miscellaneous bore to all tons in Official Territory and in Southern Territory the percentage was 27.2, to all tons in Southern Territory.

A. Just a minute.

[fol. 420] Mr. Cotterill: I believe I was misinformed as to the page number.

The Witness: Yes.

Mr. Smelker: You are referring to page 3, I believe.

Mr. Cotterill: I meant to refer to page 3 instead of page 5.

The Witness: All right. Now, what was the question?

Chairman Aitchison: Read the question please.

(Question read.)

By Mr. Cotterill:

Q. With those figures before you as to total tons, do you find that small difference in the relative percentage of manufactures to total tons a very startling one, enough to have any significance of consequence favorable to low rates in the North?

A. Yes, sir. While the difference in that case is only two and a half percentage points, two and a half per cent of nearly one billion tons is a mighty big tonnage. Now, I call your attention also, when you come over to revenue, and it is indicative, if not conclusive, of the fact that the manufactures and miscellaneous traffic in the North and East is of a higher grade than manufactures and miscellaneous traffic in the South, we find that in the Eastern District that tonnage produced 41.4 per cent of the total revenue, while

in the South it produced only 34.7 per cent. Revenue there is far more important than tons.

[fol. 421] Q. All right. We start with an agreement that in respect to total tons the relative percentages are not greatly different, but in terms of gross revenue the percentages are considerably more different.

A. I do not agree with you on that.

Q. Why?

A. I still say that two and a half per cent of one billion tons is——

Q. It is a lot of tons.

A. —a lot of tons.

Mr. Cotterill: I am speaking of relatively, as I thought you were in the direct testimony.

By Mr. Cotterill:

Q. Speaking only of the gross revenues, why do you assume that the relative per cents of gross revenue derived from that description of traffic to the total is to be accounted for entirely by the far higher grade of manufactured commodities in the North than in the South? May there not be other and perhaps more compelling reasons for the difference?

A. There might be some reasons of which I am not aware, Mr. Cotterill, but I think in my own opinion that the chief reason is the fact that in the North and East the tonnage included in that particular group is generally of a higher grade than in the South. I think that also runs to our less than carload tonnage. On the whole the less than carload [fol. 422] tonnage, most of which moves on class rates, although not all of it, runs a somewhat lower grade than in the North and East.

Q. Well, is it not——

A. May I go on?

Q. I thought you had finished.

A. No.

Q. Pardon me.

A. I am speaking wholly of within the South.

Q. Yes.

A. When we come from the North and East to the South, I think you will find that generally speaking to be of a little higher grade than wholly within the South.

Q. Granting the weight to be attached from your impression, based on long observation, is the matter you just referred to capable of statistical demonstration, if you chose to undertake it?

A. Well, I am doubtful of it, Mr. Cotterill. Of course, all the underlying figures I think could be obtained, but what one might do with them after they got them is another thing. I do not think you can make a comparison worth very much.

Q. As we move along further in connection with your sheet 3 of that exhibit, you appear to be giving expression to these relative percentages in terms of per mile of rail- [fol. 423] road as if to accentuate the greater density of these manufactured commodities in the North than in the South. Why do you choose the factor per mile of railroad to the exclusion of per mile of track and other plant investments which are necessitated in the North by reason of its greater aggregate tons?

A. Of course, when I used the number of tons per mile of railroad, I knew, and I think I conceded, that it was only one of the many things to be taken into consideration. That, standing by itself, did not mean a great deal. You have to take into consideration so many things in connection with the use of any of these figures, and I think it is true of these so-called unit costs developed by Dr. Edwards.

Q. Except as you did exhibit the relative percentages in terms of total tons wherein the difference is two and a half per cent, did you not make selection of the best bases of comparison which only purport to demonstrate your theory?

A. No.

Q. And have you not excluded the other permissible bases of comparison which perhaps would either have altered or certainly modified your theory?

A. No. I do not think I have excluded anything worthwhile, at least not to my knowledge. I used revenues. I [fol. 424] used the relationship between these different groups and even as between the different groups within the larger groups. I used many different things.

Q. What significance do you attach to the mere statement of a given number of tons of a given kind of freight per mile of railroad in one region as compared with another? What does that connote to your mind?

A. It is just another way of indicating what tremendous volume they have of this high-grade well-paying freight

on which their class rates generally apply, and what poor folk we are down south when it comes to that traffic.

Q. What would be the significance of the tremendous total volume if, in order to accommodate it, required a proportionately greater railroad plant than you have in the South?

A. That is a factor to be taken into consideration.

Q. You think so?

A. But it does not necessarily require a proportionate increase in investment.

Q. Granted it would not require a proportionate increase in investment, do you think you have presented sufficiently comprehensive data in order to ascertain the full facts concerning this troublesome matter?

A. I have not, Mr. Cotterill.

Q. All right.

A. Of course, I am not the only witness in this case.

[fol. 425] Q. I understand that.

A. I hope your question will be answered.

Mr. Cotterill: However, Mr. Kerr, you are one of the great important witnesses. I am nearly through now.

By Mr. Cotterill:

Q. At any rate, in your own way, you appear to assume, Mr. Kerr, that because there is an established order of things in the North that somehow or another that enables the northern railroads to maintain their prevailing merchandise rates in the territory because the language you used has been that the southern carriers could not afford as well as do the northern lines, a rate level like that in the north. Now, what do you you find to indicate that the northern lines can afford their rate level on merchandise traffic?

A. I do not know whether they can or not.

Q. Have you looked to see, in any respect concerning the Edwards data?

A. I do not understand what you mean.

Q. In other words, sir, when you have examined the Edwards data for that purpose, have you excluded all consciousness of what is demonstrated concerning the inadequacy between cost and revenue of the northern railroads on their merchandise traffic?

A. Mr. Cotterill, to be perfectly frank, I would not know how to go about applying the Edwards cost formula or the

[fol. 426] results of that formula to the Eastern class rate level.

Q. I see. So therefore you did not undertake to do so?

A. Of course not.

Q. All right.

A. I do not know how to apply it to our own class rate level.

Q. What is it you apprehend, then, in the way of injury to yourself from anything Dr. Edwards has done?

A. In the first place, I am not satisfied that the formula results in unit costs, one territory versus another, that are fairly comparable, because as I stated, I think he has compared unlike things. I think to a certain extent he recognizes that himself. I do not believe that, having arrived at so-called unit costs, you can apply them in a practical sort of way to individual rates or groups of rates.

Q. Now, Mr. Kerr, is it not true——

A. I do not want my statement to be misinterpreted.

Q. Of course.

A. I think to a certain extent, subject to certain qualifications, perhaps a good many qualifications, they might be considered as a floor, even though I think you have got to measure with this, that and the other.

Q. At any rate, there seems to be implicit in all you have said on this topic, Mr. Kerr, that there is an error in the reasoning of those advocates of territorial equality, [fol. 427] however it is accomplished, in so far as they contend that if there were that equality, there would come about more nearly an equal diffusion of traffic as between manufactures and raw materials. Without myself indicating any point of view on the question, I ask you as a witness: Do you challenge the assertion or contention that equality, however it may be brought about, would have a significant effect on the industrial development of the West and the South?

A. I do not think that the equality some of our friends are talking about would be a good thing, industrially or otherwise, for the South. It would necessarily involve increases in a good many of our rates. Our raw products, raw materials——

Q. Let me ask you right there: You are there assuming it would be brought about by means of reductions in your merchandise rates, is that correct?

A. And with some increases in many of the other rates. In other words, I am assuming you are talking about a leveling process in both territories. Now, it may be——

Q. Mr. Kerr, is it not——

Chairman Aitchison: Just a minute, Mr. Cotterill.

Mr. Cotteril: I beg your pardon.

Chairman Aitchison: Let the witness complete his answer.

[fol. 428] Mr. Cotterill: I am sorry. I misunderstood him. He seemed to pause, and I thought he had completed his answer.

Chairman Aitchison: Proceed, Mr. Kerr.

The Witness: Where was I?

Chairman Aitchison: Mr. Cotterill had asked you whether this process of leveling as between the South and the North would have the effect of making economic changes in the South.

The Witness: I do not think so. As a matter of fact, I think we will show it before we get through. Even under the present adjustment——

Mr. Healy: Louder.

The Witness: Even under the present adjustment the South has shown a greater rate of growth, industrially, and in population growth, if you please, than any other section of the country.

[fol. 429] Chairman Aitchison: That is not what he asked. He asked whether or not the leveling process as between the South and the North would have an effect upon the economy of the South which would change the traffic figures as well as change the economy of the South.

The Witness: A change in traffic figures——

Chairman Aitchison: It is not answered by saying that the economy of the South has changed.

The Witness: Not necessarily due to freight rates. Are you talking about traffic in tons, one commodity versus another?

Chairman Aitchison: He wants to know whether the economy of the South would be changed if the rate levels were placed on an equal basis.

The Witness: I do not think so, Mr. Chairman.

Chairman Aitchison: All right.

The Witness: I think they would be adversely affected in many ways.

By Chairman Aitchison:

Q. That is a change, is it not?

A. Sir?

Q. If it is adversely affected, that is a change, is it not?

A. I was confused. I thought you meant, favorably changed.

Mr. Cotterill: I have one more question, Mr. Kerr.

By Mr. Cotterill:

Q. You seemed to make an observation to the Chairman [fol. 430] in answer to a question of his earlier that among the dissimilar traffic circumstances presenting themselves to the Northern and Southern carriers, was the matter of competition for business between railroads and motor carriers. Was there implied in anything you said the thought that in that respect there is a difference in the two territories?

A. Are you thinking in terms of common carriers, contract carriers, or private carriers?

Q. I would have to say, whatever you had in mind when you made the allusion to motor carriers.

A. I know of no appreciable difference so far as common carriers are concerned, but I do——

Q. All right.

A. May I finish my answer?

Q. Pardon me. Go ahead.

A. —but I do believe that there is a vast difference between our situation in the South and that in the North and East so far as the so-called exempt carriers are concerned.

Q. That is, the agricultural haulers?

A. Yes.

Q. Yes.

A. And that means a great deal to us.

Q. Does it mean anything in class rates?

A. No; not speaking generally, no.

[fol. 431] Q. When you made your additional reference to motor carriers, some of us gathered the impression that you wanted the Commission to think that your present merchandise rate level has been brought about by reason of the circumstances of competition between you and motor carriers for freight traffic. Did you mean that inference?

A. I did not intend to leave that impression, that our merchandise class rate level or merchandise rate level or class rate level was brought about entirely——

Q. No.

A. —or even in large part——

Q. Or even in large part?

A. Let me finish my answer, please.

Q. Pardon me. Go ahead.

A. —or even in large part by motor carrier competition.

Q. Yes?

A. There have been many changes that have been brought about by that reason.

Mr. Cotterill: That is all, thank you.

Chairman Aitchison: Does anyone else have cross-examination of Mr. Kerr?

Mr. Eshelman: I have just a few questions, Mr. Chairman.

Chairman Aitchison: Mr. Eshelman.

By Mr. Eshelman:

Q. On page 14 of your written statement, Mr. Kerr, you [fol. 432] have this statement, referring to the Louisville & Nashville Railroad and the Illinois Central coal tonnage: "This particular coal tonnage has the effect of greatly depressing the unit cost averages found in the Edwards' study for the Southern region." Can you say what was the effect of that tonnage upon the unit costs of the Illinois Central and Louisville and Nashville Railroads themselves?

A. No, I can't tell you. I qualified that by stating that I was probably wrong as to the Illinois Central coal tonnage in Illinois. I do not know what the figure is, but I know if you could have taken several years ago, and I think it is true as late as 1938 or 1939, the Commission's figures as to the average revenues per ton or the average cost per ton miles on the Commission's formula, not the Edwards' study——

Q. Do you mean to state——

A. Just a minute, please.

Chairman Aitchison: Just a minute. Let the witness finish his answer, please.

Mr. Eshelman: Pardon me.

The Witness: As I was saying, if you take the Illinois Central and the Louisville & Nashville by themselves, you get averages that are about two mills lower than for the Southern group as a whole, indicating to me that the South [fol. 433] itself is very much—the group is very much depressed by the influence of this heavy coal tonnage on the Illinois Central and Louisville & Nashville Railroads.

Mr. Eshelman: I understand that.

By Mr. Eshelman:

Q. Now, since you can speak with definiteness your opinion that the region results are depressed by reason of the coal tonnage, what would you say as to the effect upon the unit costs of the Louisville & Nashville and the Illinois Central themselves by reason of that coal tonnage?

A. I think I answered that question before, that when you take out those coal sections, the rest of the Louisville & Nashville Railroad, for example, would not be much different from the Southern Railway. I am not talking about taking out the whole coal tonnage for either railroad. I am only talking about the Louisville & Nashville coal tonnage that moves over one or two operating divisions.

Q. Do I understand it is your view that the presence of the coal tonnage on the Louisville & Nashville and Illinois Central Railroads, makes their unit costs lower than they otherwise would be?

A. For the remainder of those lines?

Q. Yes.

A. I think so.

Q. On page 16 of your statement you refer to average [fol. 434] hauls in 1939 within the East and South of 161 and 204 miles respectively, and then conclude with this statement: "But these figures may be used as approximately representing the ratio South versus Official territory." I take it you mean the ratio of average hauls per shipment within those territories?

A. Yes, sir.

Q. If the actual ratio were narrower than that, would it then be true that the percentage of 16 which you have used, would be reduced?

A. Yes.

Q. Is there any available evidence of a definite character that shows us what are the differences in actual average hauls in any region?

A. I know of nothing and so stated. I should perhaps qualify that, that sometimes reference is made to the so-called 1-Day Study of former Coordinator Eastman. I believe that did show average hauls per shipment, although I am not sure about average hauls per shipment per territory.

Q. That was for the country as a whole, was it not?

A. Yes. That was incomplete. It covered selected points and not all traffic, and I do not think it is worth very much.

Q. Would it be true that if there were a greater number [fol. 435] of carriers participating per shipment in one territory than the other, that the effect would be to produce a statistical average haul shorter than as if there were a fewer number of carriers participating in the same actual length of hauls?

A. That is self-evident, and I think I so stated when I illustrated—well, I did not state it in that way, Mr. Eshelman.

Q. On page 19 of your statement, paragraph 2, you say that on the whole the traffic in the Southern region appears to be of a lower grade than that of Official territory roads. Did you include products of mines in both groups in making that statement?

A. Yes. I also gave consideration to the fact that products of mines tonnage, speaking particularly of coal, was generally regarded as a very desirable tonnage because of the conditions under which it moved.

Q. On page 22 of your statement in the first full paragraph you refer, among other things, to rates of return, and then say that it must follow that the cost of transporting freight in the South is greater for any given distance than in the East, and so forth. In reaching that conclusion, have you not omitted from consideration the effect of any differences in relative profitability or unprofitability of passenger traffic in the two territories?

[fol. 436] A. No. I have not omitted it. I think the Commission itself took it into consideration when they made the statement in Docket 24160 to which I referred.

Q. Well, with respect to your statement, does it not infimate that if in certain years the unprofitability of Southern

passenger business should hold down your rates of return as a whole while the reverse might have been true for the Eastern lines, that that would necessarily mean the costs of transporting freight were greater in the South?

A. Whether you put it in or put it out, in my opinion, everything points to the fact that the cost in the South is considerably higher than the cost in the East.

Chairman Aitchison: I will sustain a motion to strike the answer, Mr. Eshelman, as not responsive to the question.

Mr. Eshelman: I make that motion, Mr. Chairman.

Chairman Aitchison: The answer is stricken. Please answer the question, Mr. Kerr.

The Witness: May I have the question again?

Chairman Aitchison: Read the question, please.

(Question read.)

Mr. Eshelman: May I frame another question, please, sir?

Chairman Aitchison: Yes.

[fol. 437] By Mr. Eshelman:

Q. Will the witness agree with me on this, that to whatever extent the effects of passenger traffic are reflected in the rates of return, that to that extent it does not follow in completeness the conclusion which he there announced?

A. It would change the figures. That is the best I can answer you, Mr. Eshelman.

Mr. Eshelman: I think I understand. Thank you.

Chairman Aitchison: Is there any other cross-examination of Mr. Kerr?

Mr. McCarthy: I have one or two questions, Mr. Chairman.

Chairman Aitchison: State your name, please.

Mr. McCarthy: Charles McCarthy.

Chairman Aitchison: Whom do you represent?

Mr. McCarthy: The Tennessee Valley Authority.

Chairman Aitchison: Have you previously appeared in this proceeding?

Mr. McCarthy: No, I have not.

Chairman Aitchison: You are appearing for the Tennessee Valley Authority?

Mr. McCarthy: Yes, sir.

Chairman Aitchison: What is the position of the Tennessee Valley Authority in this case, if you can state it briefly?

[fol. 438] Mr. McCarthy: The Tennessee Valley Authority is a corporate agency of the United States Government. We have been directed by the President of the United States to conduct a number of surveys dealing with economic conditions in the Tennessee Valley and adjoining areas. Those instructions of the President were by an executive order pursuant to authority vested in him by the Tennessee Valley Act. One of the surveys which the Authority has conducted was a survey of the effect of the present class rate structures upon the economy of the Tennessee Valley and adjoining areas. We have here a witness who at the proper time will be prepared to present to the Commission the results of that survey.

Chairman Aitchison: I do not understand the position of the Tennessee Valley Authority. Can you state the position intended to be taken?

Mr. McCarthy: The position which the Authority takes is as follows: These surveys and the data collected in making the surveys indicate that the present freight rate structures being higher in the South than in Official territory are retarding the economic development of the Tennessee Valley and adjoining areas in the South and West, and that this situation should be corrected.

Chairman Aitchison: That is sufficient. That permits us to orient your position in the case.

[fol. 439] Mr. McCarthy: Thank you, sir.

Chairman Aitchison: Proceed.

By Mr. McCarthy:

Q. Mr. Kerr, if I understood your testimony correctly, it is all based on the primary proposition that the traffic distribution in the South is so different from the traffic distribution of the Northern roads that similar standards of rates would not be practical, is that correct?

A. Right.

Q. It is also based on the proposition that that situation is static, and that reductions in class rates on manufactured articles in the South would not result in any greater movement of manufactured articles?

A. Your question, Mr. McCarthy, is double-barreled. I have made no statement that the traffic conditions in the South are static. There has been no inference of that kind. Now, I do not know how I can go ahead and answer your

question in an intelligent way when you are assuming something that I did not say.

Mr. Bee: We cannot hear the witness.

The Witness: Will you read the question again, please.

(Question read.)

A. My general answer to the latter part of your question is that you have correctly stated my position. Now, there [fol. 440] are exceptions. Certain reductions on certain commodities would, I think, result in greater movements from the South to the North and East in competition with similar commodities produced in the North and East. There might be added from time to time additional commodities. The Commission dealt with a great number of them in the Southern Governors case, as you know. It dealt with all of those on which any evidence was presented. I would not say that that situation is static. It never has been static in my many years of experience.

By Mr. McCarthy:

Q. Mr. Kerr, your study is all based on the present distribution of traffic, and if it were a fact that reduced freight rates would change that distribution, then it follows, does it not, that that would invalidate your conclusions?

A. No. I do not think that follows. I used 1939 for the same reason Dr. Edwards used it. We had to use some year. We used the last year that was available, and certainly the last normal year. You take 1938, 1937, 1936 or any year back there, and you find differences from one year to another. You will find vast differences in 1940, 1941 and 1942, as we all know. I base my conclusions not merely on what I found for 1939, but what I know to be the situation over a period of years.

Mr. McCarthy: Well, now, perhaps you do not follow [fol. 441] me.

By Mr. McCarthy:

Q. The only point I am making, and this is what I would like to get your views on, is this: Is it not true that if it is a fact that reductions in class rates on manufactured articles in the South would increase the movement of those articles, then your conclusions being all based on the present distribution of traffic, would not be valid?

A. My conclusions are not all based on the present distribution of traffic. They are based in part, at least, on what we might reasonably expect. I do not know, Mr. McCarthy, whether this is a proper answer to your question or not, but the reduction in class rates alone would build up industry and retain industries, and there would not be vast sections of the North and East that showed tremendous decreases in population, 1940 over 1930, and in many cases 1930 over 1920.

Mr. McCarthy: I move that that answer be stricken. I do not believe it is responsive to the question.

Chairman Aitchison: The answer will stand. You have been talking about present rates. The rates upon which his exhibit is based, are 1939.

Mr. McCarthy: I meant to refer to the 1939 rates. I have just one more question.

By Mr. McCarthy:

Q. Are you prepared to testify that a reduction in the [fol. 442] rates on manufactured articles would not lead to an increased movement in the South?

A. It would all depend on the commodity and the circumstances.

Mr. McCarthy: I think that is all.

The Witness: I think you will agree with me on that.

Chairman Aitchison: Is there any further cross-examination?

Mr. McCollester: I have a few questions, Mr. Chairman.

Chairman Aitchison: Mr. McCollester.

By Mr. McCollester:

Q. Mr. Kerr, pursuing the last question of previous counsel just a minute, would you say that if the rates on manufactured articles in the South were reduced and the rates on raw materials in the South were raised to the Official level, it would stimulate the movement of manufactured articles in the South?

A. No. I think that would be more—I would like to have the reporter read that question.

Chairman Aitchison: Read the question, please, Mr. Reporter.

(Question read.)

A. May I ask you a question?

Mr. McCollester: Yes.

The Witness: What do you mean by "in the South"?

[fol. 443] Mr. McCollester: Well, the same South that the previous counsel was talking about.

The Witness: You mean, wholly within the South?

Mr. McCollester: Wholly within the South.

The Witness: That is what confused me, because I did not think he was talking about it there.

Chairman Aitchison: There was no distinction made in the examination by Mr. McCarthy as between interterritorial and within the territory. He made no distinction.

The Witness: I am quite certain that it would not stimulate the movement. That is hardly a complete answer, but I cannot go beyond the question.

Mr. McCollester: One other question, Mr. Kerr.

By Mr. McCollester:

Q. That the record may be clear, should we understand that you have used in your Exhibit No. 16, statistics for the year 1939 because that was the year for which Dr. Edwards took figures, and not because you intend those to represent the facts as they are on the date of this hearing?

A. You are right.

Chairman Aitchison: What are the facts as they are at the date of this hearing?

Mr. Collester: Since 1939——

The Witness: Just a minute. The Chairman is asking you a question.

[fol. 444] Chairman Aitchison: I asked what the facts are as of the date of this hearing.

The Witness: The exhibits put in by Dr. Edwards cover 1939. I believe he has, within the last few days, introduced some figures for 1940 and 1941, but what they are, I do not know.

Chairman Aitchison: You said something about 1939 being the last year for which figures were available.

The Witness: I said it was the last normal year. I do not think that is peculiar to our section, Mr. Chairman.

By Chairman Aitchison:

Q. Do you want us to take 1942 figures?

A. No. I do not think so.

Q. Why not?

A. Because I think traffic conditions, commercial conditions, and economic conditions are so upset today that I do not think it furnishes any guide for the future. We have got today, for example—I think I can go this far, and say that we have traffic moving through the Gulf, Southern Florida and South Atlantic ports in tremendous volume that we never heard of before. I do not want to go any further for some other reasons, but I think that illustrates what I have in mind.

Chairman Aitchison: Proceed, Mr. McCollester.

By Mr. McCollester:

Q. In other words, Mr. Kerr, at the present time because [fol. 445] of the war there has been, has there not, a tremendous change in the nature of commodities moving, in the channels, routes of movement, the movement of passenger traffic and in the general railroad situation?

A. Correct.

Q. Is that not correct?

A. Absolutely ght.

Q. Now, based upon your own experience as a railroad traffic man, would you be prepared to prophesy whether the figures for 1939 that you have put in or the general testimony that you have just given as to changed conditions as of today represent what conditions will be when the war is over?

A. I do not know.

Mr. McCollester: Thank you.

By Chairman Aitchison:

Q. What has been the general trend up to the present time contrasted with 1939? Take the two territories you have mentioned, Official territory and the South, and if you can, in a sentence, give us what the situation is.

A. Mr. Chairman, I have not compared them. I do not know.

Q. What is your general observation?

A. I believe, and I do not state it to be a fact, that the conditions are more favorable to the East than to the South because of the tremendous manufacturers up there of [fol. 446] the higher grades of articles and munitions of war. That does not mean that we do not have a tremendous volume of munitions, shells and other movements, but it is awfully hard to see this picture.

Q. Going back to Mr. McCollester's question, you have occasion to make rates at the present time, do you not?

A. Yes.

Q. You do not mean to say that in the South you are not making rates for the future because you can't foresee the result of the war, do you?

A. I am not making this as a facetious answer—I do not want to give an incorrect answer to the question, but I do not want anybody who reads this record to think I gave an improper answer.

Q. In your original statement you took five minutes to tell us that you thought you understood the principles of rate-making.

A. I do.

Q. Is it an accepted principle of rate-making and a sound principle of rate-making that at the present time you cannot make a new rate because you do not know what is going to happen after the war?

A. No, it is not, because we are making thousands of them.

Chairman Aitchison: Are there any other questions on cross-examination?

[fol. 447] Mr. Isaac Born: I have one or two questions, Mr. Chairman.

Chairman Aitchison: Mr. Born.

By Mr. Isaac Born:

Q. Mr. Kerr, with respect to your Exhibit No. 16 in which you refer to the percentage of tonnage at the heading and percentage of revenue, the percentage of revenue is only worth while if you know the distances hauled, is that not right, or of value, I mean?

A. I do not understand you, Mr. Born.

Mr. Isaac Born: Read the question, please, Mr. Reporter.

(Question read.)

A. Of course, Mr. Born, if you knew the distance each commodity was hauled on the average in each territory, the comparison would be of far more value, but I think it is of great value for the purpose for which I used it in this particular exhibit which was to merely show the percentage distribution in tons and revenue, one district versus the other.

By Mr. Isaac Born:

Q. The suggestion of particular traffic density does not enter into your conclusion at all, is that right?

A. No, no. These are merely percents of totals.

Q. In reference to the density of traffic which, of course, as I understand it, is a feature upon which you regulate [fol. 448] railroad rates, have you given consideration to the relative situation of revenue ton miles per mile of road in the South as compared to the East?

A. Yes. They are, in 1939—and there is not much difference for previous years—slightly higher than the average in the Southern region.

Q. The point is, 1940 would not be materially different than 1939, would it, as to the relative situation?

A. I do not know. I have not made——

Q. Pardon me?

A. I have not made the comparison.

Q. Well, 1940, assuming that it does, because it really does—in the Southern region the revenue ton miles per mile of road was 47.2——

Chairman Aitchison: Mr. Born, I am not going to let you testify that way.

Mr. Isaac Born: I beg your pardon?

Chairman Aitchison: I am not going to let you testify that way.

Mr. Isaac Born: I was not testifying, Mr. Chairman. I was taking his figures.

Chairman Aitchison: 1940?

Mr. Isaac Born: Well, I said "1940". I should have referred to 1939. I will take them for 1939.

By Mr. Isaac Born:

Q. In 1939 the ton mile revenue, freight, per mile of road, [fol. 449] in the Southern region, was 47.59 of the Eastern district.

Chairman Aitchison: What are you talking about, so we can check these figures?

Mr. Isaac Born: I beg your pardon?

Chairman Aitchison: What are you referring to? I notice you have a document before you. What is it?

Mr. Issac Born: You can look at it if you want to, Mr. Chairman. You asked me once before. It has to do with the statistics of railroads prepared by the Interstate Commerce Commission. I have a reference to it in front of me I will refer to them in detail, if it please your Honor.

Chairman Aitchison: All right.

By Mr. Isaac Born:

Q. According to the 53rd Annual Report on the Statistics of Railroads in the United States for the year ended December 31, 1939, at page 170, Item No. 6. divided by Item No. 8 at the same page, you will find that the quantity of ton-mile revenue per mile of road is 47.59 of the Eastern district. You gave that no consideration in your assembly of opinion, did you, Mr. Kerr?

A. What was that you said?

Q. I beg your pardon?

A. You said, the Southern ton-mile revenue——

Q. The ton-mile revenue per mile of road for the Southern region for the year ending December 31, 1939, as per the [fol. 450] authority to which I just referred and made of record was 47.59. Did you give any consideration to that when you went into the matter of what you concluded the rate relation should be?

A. I told you I had not looked at 1940.

Q. All right.

A. Or 1941.

Mr. Isaac Born: I think I will have to get it into the record again. Pardon me for this repetition, Mr. Chairman.

The Witness: Wait a minute. Are you sure you are correct in saying 47.59 represented the ton-mile revenue?

Mr. Isaac Born: I said that in the year ended December 31, 1939, the ton-mile revenue, freight, per mile of road was 47.59 per cent of the Eastern district. That is what I said.

The Witness: The actual ton-mile revenue?

Mr. Isaac Born: I said, ton-mile revenue, freight, per mile of road. I am going to get to the revenue in just a minute. I just want to point that out and ask you if you gave any consideration to that.

The Witness: The revenue per ton per mile of road?

Mr. Isaac Born: I said the ton-mile revenue per mile of road.

By Mr. Isaac Born:

Q. You know what this is, do you not?

[fol. 451] A. Let me see the figure.

Q. Yes.

A. I do not know what you are talking about.

Q. Certainly you know what ton-mile revenue is.

A. Yes.

Q. You have been a long experienced railroad man, you say.

Chairman Aitchison: Mr. Born, do you not have these figures in an exhibit you are going to put in?

Mr. Isaac Born: I beg your pardon?

Chairman Aitchison: I asked you if you did not have these figures prepared in exhibit form, so you could put them in later?

Mr. Isaac Born: No. I am asking a question from figures which he gave me and which I confirmed from my figures which are exactly correct. I am not putting any exhibits in at the present time, your Honor. I do not know whether I will put in anything.

The Witness: I would have to study this thing. I don't know what it is. I don't know what you are talking about, Mr. Born.

Mr. Isaac Born: Well, you referred to it in your exhibit.

The Witness: No. I did not refer to it at all.

Mr. Isaac Born: Well, that is a matter of fact.

The Witness: I beg your pardon?

[fol. 452] Chairman Aitchison: Off the record.

(Discussion outside the record.)

Chairman Aitchison: On the record. Proceed, Mr. Born.

By Mr. Isaac Born:

Q. For the year 1939 the net operating income per mile of road in the Southern district was 49.8 of the net operating income per mile of road in the Eastern district.

Chairman Aitchison: Are you asking him that as a question, Mr. Born?

Mr. Isaac Born: Just a minute. Let me——

Chairman Aitchison: Are you asking him that as a question?

Mr. Isaac Born: Yes. I am asking this as a question. That is, I am making that the basis of my question. I will put it this way:

By Mr. Isaac Born:

Q. Do you know that the operating ratio, or rather, that the net operating income per mile of road in the Southern region was 49.8 per cent of that in the Eastern district?

A. No, I do not.

Q. For the year 1939?

A. No, I do not know it. I have not the figures available.

Q. Do you know that the traffic density, or that the gross [fol. 453] ton mile revenue per mile of road in 1939—do you know what that was in the Southern region?

A. The gross ton mile revenue?

Q. The revenue, gross ton mile, per mile of road in the Southern region. How much was that?

A. I think that is shown on my exhibit, if I correctly understand your question.

Q. Tell me what it is.

A. On page 1.

Q. Pardon me?

A. On page 1 of my Exhibit No. 16 there is shown the gross ton mile revenue in freight trains, revenue and non-revenue. It shows——

Q. Well, if it is shown there——

A. Will you let me answer the question?

Chairman Aitchison: Let the witness finish his answer, Mr. Born.

Mr. Isaac Born: Pardon me.

The Witness: I assume when you ask a question you want it answered.

Mr. Isaac Born: Go ahead.

The Witness: It shows for the Southern region 3.69 mills——

Mr. Isaac Born: I did not ask you that. I asked you the revenue gross ton miles per mile of road.

[fol. 454] The Witness: I thought you said "revenue":

Mr. Isaac Born: You gave me something about mills. I am not asking for mills.

The Witness: I have not the figure readily available.

Mr. Isaac Born: I understood you to say you had.

The Witness: I have it somewhere around, but I cannot put my finger on it right now. I think it is in Exhibit 1, page 1.

By Mr. Isaac Born:

Q. In other words, you gave no consideration to the net operating income of the railroads and the revenue ton miles carried, is that correct, in your conclusion?

A. I did give consideration in a broad way to both factors, but not specifically.

Q. What I have in mind is, if you gave it consideration, how did you arrive at your figures that the higher grade traffic should pay more in the North, or more in the South, with respect to the final charge? How would you arrive at that unless you know what the particular traffic density is?

A. The traffic density itself is all embraced in the basis figures that are used. I pointed out, Mr. Born, that the average per ton mile in the Southern region was slightly under that in the Eastern district. It is claimed, and I agree with it, that the rate level in the South is higher than that [fol. 455] in the North.

Q. Well, density——

A. However, the haul is longer in the South than it is in the North. At least, everything I have points to that fact. All of those things lead me to conclude——

Q. Actually, if the haul were greater——

A. Wait a minute. I have not finished my answer.

Q. If the haul was greater, the ton miles even on the same level of rates would be greater, would they not?

A. (No answer.)

Q. If the haul was longer it would be greater on the same level of rates, would it not?

A. The tendency would be to reduce the ton-mile revenue if the haul in the South were longer. If the traffic is of a lower grade generally in the South than the North, that would further tend to reduce the ton-mile revenue.

Q. The first premise is undoubtedly correct.

A. Sure.

Q. But it takes your traffic density to determine what your rate levels should be, is that not true?

A. It has a lot to do with it.

Q. It always was true that until this recent investigation your rates in the South were built 40 per cent over the rates in the North, were they not?

A. No.

[fol. 456] Q. And that is what made your income balance?

A. They were not.

Q. Nevertheless, that is what made your income balance, and that is the only way it could balance?

A. That is true only of first class, 39 per cent.

Q. But you made your rates on cotton and food for human consumption higher than 40 per cent, did you not?

A. No, sir.

Q. I beg your pardon?

A. No, sir.

Q. Is it not true that——

Chairman Aitchison: He has answered your question twice now, Mr. Born.

The Witness: He starts out by comparing the Southern level with the Northern level——

Mr. Isaac Born: The Chairman says you have answered the question twice, so there is no necessity for answering it a third time.

By Mr. Isaac Born:

Q. My question was whether traffic density had anything to do with your figures in arriving at your conclusion.

A. Frankly, I do not understand his question, Mr. Chairman.

Mr. Isaac Born: That is all.

Chairman Aitchison: Are there any other questions on cross-examination? (No response.) Is there any redirect [fols. 457-458] examination?

Mr. Gwathmey: No redirect examination.

Chairman Aitchison: You are excused.

(Witness excused.)

Chairman Aitchison: Off the record.

(Discussion outside the record.)

Chairman Aitchison: We will adjourn until 9:30 tomorrow morning.

(At 5:15 o'clock P. M. September 22, 1942, adjourned to September 23, 1942, at 9:30 o'clock A. M.)

[fol. 459]

Claypool Hotel,
Indianapolis, Indiana,
September 23, 1942.

Before Division-2 of the Commission

Clyde B. Aitchison, Chairman of the Commission, presiding.

Walter M. W. Splawn, Commissioner.

J. Haden Alldredge, Commissioner.

Present: Paul O. Carter, Examiner; W. J. Koebel, Examiner; T. Leo Haden, Examiner; Mr. John J. Murphy, South Dakota; Mr. George McConnaughy, Ohio; and Mr. W. H. Scott, South Carolina, comprising a Cooperative Committee of State Commissions.

Met pursuant to adjournment at 9:30 o'clock A. M.

Appearances: As heretofore noted.

PROCEEDINGS

Chairman Aitchison: Come to order. I wish to direct the attention of respondents to the letter from the Commission of July 2nd, 1940, modified by the letter of July 29th, 1940, which have to do with classification matters, referring to advance copies of information called for, to be furnished, with the exception of the matters specified in Paragraph 8 of the July 2nd letter, concerning changes in classification [fol. 460] ratings, or newly-established ratings made on and after June 1, 1940, and stating that it is understood that such data is to be introduced at the hearing, unless requested earlier. It is suggested by the Commission that, with respect to these latter, or later, changes—I think both terms are applicable—the pertinent changes be limited to the first 800 that have been made after June 1, 1940, or up to July 1, 1942, whichever occurred first. Seemingly that request has been overlooked by respondents.

Mr. J. R. Bell: Mr. Chairman.

Chairman Aitchison: Mr. Bell.

Mr. J. R. Bell: I have been requested to make at this time a brief statement on behalf of all Class-I Respondents, which I desire to do at this time. On behalf of all Class-I Railroad Respondents generally, I desire to make a statement of record, by way of reservation, as to figures or amounts concerning value of railroad property incorporated and referred to in exhibits of Dr. Ford K. Edwards presented in this case. The totals of the figures to which I am referring are set out in column 74 on page 151 of Dr. Edwards' Exhibit No. 3. This column is headed "Recommended value of property as of December 31, 1939." It is shown on page 48 of Dr. Edwards' Exhibit No. 2 that the return included in the various apportionments of service [fol. 461] costs is based upon "the recommended ratemaking values furnished by the Bureau of Valuation for the purpose of this study." In the opening paragraph of this exhibit 2, it is stated that "The purpose of this study is to provide territorial cost data that may be used in determining the relative transportation costs in the respective rate territories."

This statement has reference only to these valuation figures. The record will show the position of these carriers in regard to other aspects of Dr. Edwards' exhibits and presentation. The matter of introduction of testimony on valuation in this case has been considered by these respondents. These values furnished by the Bureau of Valuation are of course not the final valuations by the Commission, made prima facie evidence of the value of the property under the provisions of paragraph (i), Section 19a of Part I of the Interstate Commerce Act. The purpose of the use is stated by Dr. Edwards to be for the determination of relative transportation costs. We do not consider that the question of the rate base upon which the carriers are entitled to earn, is presented for consideration as such in this presentation of Dr. Edwards. We are confident that the Commission will recognize and appreciate the fact that it would be an almost interminable matter for the Class I railroad respondents in this case to make a presentation on the subject of the adequate final valuation of their respective [fol. 462] properties, or the total of such final valuation. To seriously enter upon such collateral undertaking would necessitate the presentation of such a mass of detail in order

to make a showing considered sufficient by the respondents as to extend this hearing indefinitely, if this would be permitted by the Commission. Presumably, generally speaking, the same methods and processes were used by the Bureau of Valuation in fixing the valuation figures for the carrier in the different territories or sections of the country. It is not thought that the effect of a general increase in the amounts of valuations, as reflected by way of rate of return in the relative or comparative costs in Dr. Edwards' exhibit, if such general increase is substantially the same in the various territories, would justify the respondents in making a thorough presentation of valuation in this case. Further, it will be noted that the values in Dr. Edwards' exhibit are stated to be recommended as of December 31, 1939. It is now the latter part of 1942. In any presentation of value as such in a rate case, obviously it is the true and actual value as of the future time during which the rates prescribed are to be applied. The Commission will doubtless take judicial notice of the fact that there has been an increase or upward trend in cost and prices since December 31, 1939, and since whatever previous pricing period [fol. 463] was employed by the Bureau of Valuation, even if the adequacy of the costs and prices employed by the Bureau of Valuation is assumed.

For the reasons stated, Class I railroad respondents generally have decided not to make here a countrywide presentation on the subject of valuation. Certain individual respondents may have something to say on the subject, as to which at present I am not informed. The purpose of this statement is to make clear that these Class I railroad respondents by refraining from making a valuation presentation in this case, do not agree to or accept as adequate the valuations furnished by the Bureau of Valuation incorporated in Dr. Edwards' exhibits and presentation, and do not concede that such values are the true and actual values of their railroad properties, or that they were reached through the application of correct principles and methods.

We desire the record to show that the course decided upon by these respondents is not to be taken as committing or prejudicing any respondent so far as concerns true and actual value, and in making a presentation on the subject at any future time. I am also requested to include in this reservation, the matter of adequate rate of return, contained in Dr. Edwards' exhibits. Thank you.

Chairman Aitchison: We are ready to continue with the [fol. 464] Southern carriers.

Mr. McGehee: If the Commission please, our next witness will be Mr. L. V. Crane. I wish to state that all of Mr. Crane's exhibits have not arrived, some of them being still on the way; but I have a sufficient number to take care of all parties except that I could not give the Eastern lines their full quota, or the Western lines, and I could not take care of the 48 state Commissions. However, that will be done. I have ten copies for the Commission. All others have now been taken care of.

Chairman Aitchison: Take the stand, Mr. Crane.

L. V. Crane was sworn and testified as follows:

Direct examination.

By Mr. McGehee:

Q. Will you please state your full name, your place of residence, and your occupation.

A. My name is L. V. Crane. I reside in Washington, D. C. I am Freight Traffic Manager of the Southern Railway Company.

Q. Mr. Crane how long have you been in the Traffic Department of the Southern Railway system lines?

A. For more than 30 years.

Mr. McGehee: I think, if the Commission please, that is sufficient to qualify the witness, and I shall proceed no further along that line.

[fol. 465] By Mr. McGehee:

Q. Mr. Crane, have you prepared an exhibit for introduction in this case?

A. I have.

Q. That exhibit consists of 25 typewritten pages, and certain sub-exhibits attached thereto, A to E inclusive; is that correct?

A. Yes, sir.

Mr. McGehee: How does your Honor want that exhibit numbered?

Chairman Aitchison: No. 17.

(Exhibit No. 17, Witness Crane, marked for identification.)

Chairman Aitchison: I notice a lot of argumentative matter scattered through the exhibit that is not supposed to be there, Mr. McGehee.

Mr. McGehee: Well, it is very difficult, of course, if the Commission please, taking the testimony of Mr. Jensen—and this is all related entirely to the testimony of Mr. Jensen—to handle it any other way.

Chairman Aitchison: For instance, at the bottom of page 21 of the exhibit: I do not see how this witness is in a position to say whether it is conceivable or inconceivable that the Commission would do something.

Mr. McGehee: Well I expect, Mr. Chairman, that you will find some argument in the exhibit, and possibly a good deal [fol. 466] of it. I think it is fair to say, however, that in almost every exhibit that is filed, either by Commission's witnesses, or others, there can be found some argument.

Chairman Aitchison: Well, we do not like to have it. We try to keep the exhibits down to the bare facts only.

Mr. McGehee: That is true.

Chairman Aitchison: You are quite competent to argue this case later.

Mr. McGehee: I am very sorry, if the Chairman please, but I did not hear that.

Chairman Aitchison: I say, you are quite competent to argue this case later.

Mr. McGehee: I understand that!

Chairman Aitchison: Proceed.

By Mr. McGehee:

Q. Mr. Crane, was this exhibit No. 17 for identification, prepared by you, with the assistance of others?

A. It was.

Q. Was it prepared under your supervision and direction?

A. Well, aside from the exhibits themselves, it was prepared by me entirely.

Q. The sub exhibits?

A. Yes, sir. The sub exhibits were prepared under my direction and supervision.

[fol. 467] Q. Are the facts therein stated, true and correct, to the best of your knowledge and belief?

A. I did not hear.

Q. I asked you if the facts stated in the exhibit are true and correct, to the best of your knowledge and belief?

A. They are.

Mr. McGehee: If the Commission please, at this time I offer the exhibit in evidence.

Chairman Aitchison: Is there any objection?

Mr. Norman: If your Honor please, I suppose, in the interests of time, that it would be better not to object to the reception of the exhibit into evidence; but just going through the document rather hurriedly here, it looks to me as though the typewritten part of it is the brief. It is not testimony at all, most of it, but just merely argument. Of course we do not like to let such argument as that go unchallenged, but this is not the place to challenge it.

Mr. McGehee: I may say, Mr. Norman, that in so far as there is any argument in the exhibit, I will very probably make exactly the same argument later, and you can challenge it at that time.

Mr. Norman: If it is not made later, it ought not to be made at all. I have not been able, having a few other things to do, of course, to go through the exhibit in detail, so that [fol. 468] I can point out just at this moment to the Commission the exact paragraph in which the argument is contained; but I will say that, just offhand here, it looks to me very much like it is all argument. That being true, I think it would be very much better to let the witness give his testimony, and then when he starts to argue, we can object at that time.

Mr. McGehee: If the Commission please, we have been doing our best here to conserve time. If this exhibit in its present form is not to be admitted in evidence, then I will simply have to withdraw Mr. Crane from the witness stand, and put him on at a later time, and it will probably take us several hours to complete his direct testimony at that time. If that is what is desired, then that is what I will have to do.

Chairman Aitchison: Well, we will admit the exhibit. I think it is only proper, however, to direct the attention of counsel to the fact that it casts upon the Commission the burden of determining what is matter of fact, and what is not. Of course, the line is a little difficult to draw, in the case of an expert witness, but somebody must draw it. We

will give consideration to what we consider to be the relevant and material matter contained in the exhibit.

Mr. McGehee: Is the exhibit received, then, your Honor?

[fol. 469] Chair- Aitchison: Yes.

(Exhibit 17, Witness Crane, received in evidence.)

By Mr. McGehee:

Q. Now, Mr. Crane, will you please state whether or not any recent traffic tests have been undertaken, comparing the general rate level on traffic between Official Territory and the South, with the rate level within Official Territory.

A. We have not prepared any such tests recently, no, sir. The preparation of such tests would involve a considerable amount of work, and we have not been able to undertake it under present-day conditions.

Q. Have any tests of this kind been made in the past?

A. Yes, sir, we made and submitted several such tests in the Southern-Official Divisions case. We presented a rather complete showing with respect to the rate level from Official Territory to the South, showing that the difference between that rate level and the Official Territory rate level was about the same as the difference in the first class rate level; that is, in the ratio of the difference. Our showing with respect to northbound traffic from the South to the North, was not as complete as the test in the opposite direction, for the reason, principally, that there are descriptions of traffic which move from the South to the North which do not move [fol. 470] within the North. In that case the Commission estimated that the first class rates between the North and the South were about 30 per cent higher than in the North, but the Commission said that the data submitted were not sufficient to determine what the difference was in the general rate levels between the North and the South.

Q. Now did you undertake to make any other test after the decision of the Commission to which you have just referred?

A. Yes, sir, we did. All of the Southern lines prepared a test of traffic which moved between the North and the South for the months of September, 1938 and March, 1939. That included all traffic except coal, coke and lumber traffic, which was not involved in the Divisions Case. That test was made primarily for the purpose of determining what was the effect of the Commission's decision. Of our own

traffic in that test, we took the movement from the North to points on the Southern Railway in the South, and from points in the South on the Southern Railway to points in the North via the Cincinnati and Potomac Yard gateways, and undertook to rerate that tonnage under the Official Territory level. The movement via Cincinnati and Potomac Yard made up the major portion of our movement. On the movement from the North to the South on the Southern Railway via the gateways named, the revenue from that traffic was 27.6 per cent higher than the revenue under the [fol. 471] Official Territory level. On the movement from points in the South on the Southern Railway to the North, we re-rated that tonnage as nearly as we were able to on the Official Territory level, and the revenue actually received on that tonnage was 9.02 per cent higher than it would have been on the Official Territory level, as nearly as we could determine it. Combining the southbound and the northbound movements, the revenue actually received from that tonnage was 19.24 per cent higher than it would have been under the Official Territory level.

Mr. McGehee: That is all with Mr. Crane on direct, your Honor, and the witness is now ready for cross examination.

Chairman Aitchison: Cross examine.

Cross-examination.

By Mr. Cotterill:

Q. Mr. Crane, very briefly: You stated at one place in your testimony that a reduction of class rates from the North to the South would be without value to southern industry, or commerce, or the section itself. Will you please tell the Commission why, in the well known Southern blitzkrieg, you did so reduce the class rates from the North to the South.

A. Will you state that again, please.

Q. Did you understand the question?

A. I really could not hear it at all. I am very sorry.

[fol. 472] Mr. Cotterill: Read it please.

(Question read.)

The Witness: I do not recall that case.

By Mr. Cotterill:

Q. That was not a case, Mr. Crane. It was a Blitzkrieg, if you will recall the instance.

A. Could you be a little more specific, please?

Q. Yes, sir. I refer to the occasion here just relatively recently, on which you slashed practically all of the class rates from the North to the South, in the form of the classification itself, on about 3500 articles of commerce.

A. Well, that did not involve all of the class rates, as you indicate. It involved only a small part of the ratings.

Q. Was it not the class rates on 3500 articles of commerce, then moving or previously moving under the class rates?

A. No, sir, it was not that many articles. There may have been that many ratings on the articles, however.

Q. Well, whatever its scope may have been, would you care, Mr. Crane, to give to the Commission the reasons for thus having reduced the rates from the North to the South?

A. That was done primarily in an attempt to improve the position of the rail lines, the Southern rail lines, in the handling of that particular line of merchandise traffic; or at least, to arrest the decline in the traffic.

Q. And in what way was it thought that the position of the Southern rail carriers would be improved by those sweeping [fol. 473] reductions in their merchandise rates.

A. I do not recall all that was said at the time that those reductions were made. However, it was that particular kind of traffic that was vulnerable to the competition of other means of transportation.

Q. Well, did you gentlemen proceed on the assumption that the relative volume of the traffic to be transported as between the railroads and the motor carriers from the North to the South would be altered by the mere process of your blitzkrieging the rate structure as it then existed? In what way did you assume, in other words, that the rails would in any way derive any benefit from such a slashing of rates, instantly and simultaneously met by the motor carriers?

A. Well, in some cases at least, it removed the situation under which motor carrier rates were less than the rail rates, and from that standpoint it would certainly have improved the position of the rail carriers.

Q. Well, are you suggesting to the Commission that that condition prevailed in a large enough measure to have prompted the reductions on all of those commodities, or nearly all of them—or substantially all of them?

A. Well, I will just give you one illustration. In the case of traffic from the Eastern Seaboard Territory to the South, the motor carrier rates were lower than the all-
[fol. 474] rail rates because the motor carriers made their rates the same as the water-and-rail rates.

Q. Yes; and you gentlemen were content with the differential as between yourselves and the rail-and-water routes, were you not?

A. The Commission fixed that.

Q. Yes, but you have not been averse to its continuance, I assume. It has been in existence some 30, 40 or 50 years, has it not?

A. There was not any dispute about that, so far as I know.

Q. No. Well then, except as the motor carriers supplied additional service over and above that which was being performed by the rail-and-water routes between the East and the South, your position was not adverse, was it, by the fact that the motor carriers simply observed the rail-and-water route rates?

A. Oh, yes, it was.

Q. Was it due to the fact that you have a superior service by the motor carrier line?

A. Over the water-and-rail route?

Q. Yes.

A. Yes, sir.

Q. Incidentally, has not the condition of which you speak, now been changed?

A. Yes.

[fol. 475] Q. Your attention is called, Mr. Crane, to the very frank remark in your testimony, that I now wish to ask you about, where you say, I think on sheet 5 of your exhibit—or rather—pardon me—on sheet 15, as follows: "Broadly speaking, the rates of the motor carriers on traffic to, from and between points in the South, are the same as the rates of the rail carriers."

A. That is right.

Q. Now, Mr. Crane, however different the condition formerly was, both before and during the early period of motor carrier regulation, have you not observed that the unification of rail and motor carrier rates has progressed very rapidly, and that, so far as concerns competition for business between the rails and the motor

carriers, it has to be fought out on some other basis than mere rate levels?

A. I am sorry, but I am not just sure that I followed that through to its conclusion. May I hear it again.

Mr. Cotterill: Will you read it please.

(Question read.)

Chairman Aitchison: There is a preamble there, that makes two questions out of it. Get that straightened out.

The Witness: If you mean that at the present time——

Chairman Aitchison: I think you had better try to answer those questions separately. The first question was as to whether or not the motor carrier rates and the rail [fol. 476] rates are rapidly getting on the same basis.

A. Yes, sir, that is correct—that is, broadly speaking. Of course, there are some exceptions to that.

Chairman Aitchison: The second question is as to whether or not, generally speaking, competition between rail and motor carriers has to be on some other basis than rates.

A. Oh, very largely, yes, sir.

By Mr. Cotterill:

Q. Is that exempli-ed by Exhibit A which you have introduced?

A That exhibit shows——

Q. Or perhaps we had better refer to it, more correctly, as subdivision A.

A. That exhibit shows what the relationship is of tonnage and revenues.

Q. Yes. Does it there appear that the relationship as between the rail and motor tonnage was unaltered by the blitzkrieg to which we have referred?

Chairman Aitchison: Now just a moment. Let us not talk about any blitzkrieg, because that does not mean anything to us.

Mr. Cotterill: I am very sorry, sir. That is such a well-known term in transportation parlance now that I thought it would be proper to use it.

Chairman Aitchison: Perhaps we are not common men, [fol. 477] supposed to understand what language of that sort means as far as transportation is concerned.

Mr. Cotterill: I am very sorry, sir. It has just worked

its way into transportation parlance, and I did not realize that perhaps it might not have any meaning to you.

Chairman Aitchison: Make your language as simple as you can.

Mr. Cotterill: Very well.

By Mr. Cotterill:

Q. Mr. Crane, does your Exhibit A—or sheet A of this exhibit, however you may desire to designate it, demonstrate to your satisfaction that there was no consequential change in the relative tonnage as between the rails and the motor carriers, as the result of those class rate reductions that we have been speaking about, effective September 1, 1940?

A. I could not say as to that, and I do not know as this exhibit demonstrates that, either, Mr. Cotterill. Of course conditions changed very rapidly in 1941, and I do not know how you could take into account exactly the increase in general business that took place.

Q. To the extent that your Exhibit A, or your subdivision A, that we are referring to, sets forth those relatives for the years 1940 and 1941, whatever the contributing reasons, do you not find from that exhibit that there was no change of any consequence in the relative [fol. 478] tonnage and revenue position of the two sets of carriers?

A. That is what the exhibit would indicate, yes.

Q. Yes. Now, finally, Mr. Crane, there appears to be running all thorough your testimony also——

Chairman Aitchison: Ask him a question, Mr. Cotterill. Do not tell him what is running through his testimony. Just ask him a question, the question that you want him to answer.

Mr. Cotterill: I did not think if the Commission please, that the witness would understand the question, if I did not preface it.

Chairman Aitchison: Oh, I think he would. Go ahead, now, and do not try to paraphrase his testimony every time you ask him a question.

Mr. Cotterill: I will of course, your Honor, undertake to comply with your instruction——

Chairman Aitchison: Go ahead and do it then. I have ruled.

By Mr. Cotterill:

Q. Mr. Crane, is there involved in your presentation the assumption that to bring about a territorial unification of merchandise rates, it could be accomplished only by a reduction in the Southern rate levels?

A. I do not think that I have dealt with that at all in my presentation here.

Mr. Cotterill: That is all, sir.

[fol. 479] Chairman Aitchison: Is there further cross examination?

Mr. Norman: Yes, your Honor.

Chairman Aitchison: Mr. Norman.

By Mr. Norman:

Q. Mr. Crane, with respect to the reductions of September 1, 1940, about which you have just testified, I will ask you if it is not true that at the time they were published, and in fact, in response to petitions for suspension, the Southern carriers stated that they would be put into the classification proper, instead of being retained as exceptions?

A. That was the idea, yes, sir.

Q. Why has that not been done?

A. I am not sure that I am able to answer that question, Mr. Norman. We are going to have a classification man on the witness stand a little later on, and he may be able to answer that question for you.

Q. That was in September, 1940?

A. Yes.

Q. Two years ago.

A. Yes, sir.

Mr. Norman: That is all.

Chairman Aitchison: Is there any further cross examination? (No response.) You are excused, Mr. Crane.

(Witnesss excused.)

Mr. Gwathmey: If the Commission please, I will call as [fol. 480] the next witness, Mr. R. E. Boyle, Jr.

Chairman Aitchison: Take the stand, please, Mr. Boyle.

Mr. Gwathmey: May I say at this time, if your Honor please, that the testimony which Mr. Boyle has prepared,

relates entirely to the classification feature of Mr. Jensen's Exhibit No. 7. This testimony will consist of several exhibits, and a prepared narrative statement. I am informed that both the exhibits and the statement have been duly distributed, in accordance with the plan that was agreed upon yesterday.

Mr. McCollester: We have not seen either the exhibits, or the statement, Mr. Chairman. What name do they have on them?

Mr. Gwathmey: R. E. Boyle, Jr.

Mr. Norman: Apparently the exhibits and the accompanying statement have not been distributed.

Mr. Gwathmey: I am now informed, your Honor, that they are in the hall. I had understood that they had been distributed. In other to avoid any further confusion at this time, in connection with the parties securing the exhibits, I will ask that I be allowed to withdraw Mr. Boyle, and that another witness be put on.

Chairman Aitchison: Very well.

Mr. Grubbs: Call Mr. William F. Kennedy.

Mr. Gwathmey: If the Commission please, may I state [fol. 481] that Mr. Boyle's exhibits have been made available, in accordance with the plan of yesterday, in the adjoining room, and if the parties will call for them there, they can get them.

Chairman Aitchison: I do not think that we ought to go on with Mr. Boyle until the parties have had a reasonable opportunity to examine documents of this character outside of the hearing room, when the hearing is not in progress.

Mr. Gwathmey: Very well, sir.

Mr. Grubbs: If your Honor please, the next witness, Mr. William F. Kennedy, will respond for the Southern Carriers, to the testimony given by Dr. Edwards. The nature of his testimony is such that we felt it necessary to present it in prepared form, with the interrogatories, and the answers thereto. It was distributed to the parties yesterday. With your permission, we will now proceed.

Chairman Aitchison: Very well. Be sworn, sir.

WILLIAM F. KENNEDY, was sworn and testified as follows:

Direct examination.

By Mr. Grubbs:

Q. Please give your name, residence and occupation.

A. William F. Kennedy, Louisville, Kentucky, Assistant Comptroller of the Louisville and Nashville Railroad [fol. 482] Company.

Q. What, in a general way, has been your experience in the Accounting Department of the Louisville and Nashville Railroad Company?

A. I have been in the service of the Louisville and Nashville Railroad Company Accounting Department for about 40 years and until 1908 filled various clerical positions in the Office of the Auditor of Receipts. From 1908 to 1919 I held the positions of General Clerk, General Bookkeeper, Statistician, and Valuation Accountant successively, in the Office of the Comptroller. From March 1, 1919, to the end of Federal Control, February 28, 1920, I was Auditor for the Louisville and Nashville Railroad Company (Corporation), to March 1, 1921, Auditor of Capital Expenditures, and from that date to the present time, Assistant Comptroller. I am a member and former chairman of the Statistical Committee of the Accounting Division of the Association of American Railroads and Chairman of the Southern Region Accounting Committee, which was appointed to consider and deal with the accounting features involved in this proceeding.

Q. Have you made an analysis of Exhibits Nos. 2 and 3, presented by Dr. Ford K. Edwards, Principal Economist in Charge of Cost Section, Bureau of Statistics, Interstate Commerce Commission, styled Railroad Freight Service [fol. 483] Costs in The Various Rate Territories—1939?

A. I have made such an analysis and with the assistance of the other members of the Accounting Committee have also reviewed the underlying data in the possession of the Bureau of Statistics; and in addition the data which was assembled under Dr. Edwards' direction on the forms prescribed under the Formula styled Rail—Form A, was sent to the Chief Accounting Officer of the individual Southern Region rail lines for review. The results of this investigation, for convenience, have been assembled as the

first section of my exhibit. This section consists of 16 sheets and is marked Identification No. 1.

Mr. Grubbs: May we have the exhibit identified at this time, if the Commission please, as Exhibit No. 18.

(Exhibit No. 18, Witness Kennedy, marked for identification.)

By Mr. Grubbs:

Q. Your Exhibit Mr. Kennedy which has just been marked No. 18 for identification, has a blank flyleaf upon it, is that correct?

A. Yes, sir.

Q. And it is in three parts?

A. Yes, sir.

Q. Which are numbered, or marked for identification respectively, as Identification No. 1, Identification No. 2, and Identification No. 3.

A. That is right.

[fol. 484] Q. Now will you describe the more important features of your exhibit.

A. The matter has been arranged under appropriate subject headings, the first of which, designated "A", page 4, relates to the territorial separation of freight service expenses of rail systems operating in more than one territory. It is pointed out that the territorial separation of the rail systems is not complete and the separations that are made are premised to a certain extent on the use of system averages and as a consequence are not representative for the purpose of territorial comparisons.

Q. Now what have you to say about subject B, which appears, beginning at page 6 of your exhibit?

A. Subject B, page 6, deals with the cost formula, designated Rail—Form A, which was developed by Dr. Edwards for the purpose of this study. The more important mechanical or mathematical errors which were found are here listed and, in addition, certain details of the procedure in Rail—Form A, which in my opinion are open to serious question are discussed.

Q. What have you to say about Subject C, which is dealt with commencing at page 10 of the exhibit.

A. Subject C, page 10, deals with certain studies and estimates which were either furnished Dr. Edwards by

others or made by him to develop factors for use in the [fol. 485] formula. These studies all appear to have been made from the viewpoint of the United States as a whole, and as a consequence do not reflect territorial differences.

Q. What have you to say about Subject D, which also appears on page 10?

A. Subject D, page 10, deals with the territorial summaries and cost scales. The territorial summaries here referred to are not filed in the record in this case but are part of the underlying data on file in the Bureau of Statistics of the Commission. Under this subject a number of important objections are reviewed. These include several dealing with the count of cars used for the purpose of developing unit costs in connection with switching service and developing, generally, the fact that in the last analysis the cost scales submitted by Dr. Edwards are based to a great extent upon group statistical averages.

Q. Do you have anything in particular relating to the Cost Scales?

A. It is there pointed out that the Cost Scales are constructed to apply to intra-territorial traffic only and it is also pointed out that it is impracticable to apply the territorial cost scales to the traffic handled in the respective territories in the year 1939, for the purpose of establishing their accuracy by comparison with the aggregate territorial expenses, taxes, and rents. One of the many reasons [fol. 486] why this check cannot be made is that an origin and a destination switching expense has been included in the running expenses, which latter are accumulated for the number of miles in the haul, thus resulting in duplication of terminal expenses.

Q. Do you have anything to say in regard to the treatment accorded return on investment and the recommended value which witness Edwards secured from the Bureau of Valuation of the Interstate Commerce Commission?

A. Yes, Items 15 and 16, pages 13 and 14, deal with these matters, and to avoid repetition the reader is respectfully referred to those pages.

Q. Do you have anything to say in regard to the treatment accorded the Pocahontas Region in the Edwards' Exhibits?

A. Yes. This is mentioned on page 14——

Chairman Aitchison: Just a moment please. I do not find my pages numbered. Am I looking in the right place?

The Witness: The number, Mr. Chairman, should appear in the center, at the top. I am referring to page 14, of Identification No. 1, which is the first part of the exhibit, right under the flyleaf.

By Mr. Grubbs:

Q. Continue.

A. —and I might say here that it has long been the position of the Southern Region Carriers that Pocahontas Region should be included as part of the Eastern District, [fol. 487] in view of the fact that it applies the Official Territory basis of rates.

Q. Have you any comments as to Subject E, which is covered on page 14?

A. Subject E, page 14, deals with the development of the relative cost status as between rate territories and to avoid repetition I respectfully refer the reader to what is there set forth.

Q. Now, Mr. Kennedy, what conclusion do you reach as a result of your analysis and study of the Edwards' cost exhibits?

A. My conclusion as a result of this analysis and study, for convenience, is given at page 2. Dr. Edwards, at page 102 of Exhibit No. 2, seems to have been influenced in making this study by a lack of time to conduct necessary field studies and the expense which would have been incurred in making such studies and has proceeded from the viewpoint that it appeared to him desirable to consider, only in a broad way, what are the relative costs among the various rate territories and what part costs should play in the revision of rate scales. He decided that the present study is adequate for this purpose after concluding that the possible errors were of a minor character. The conclusion as to the minor character of possible errors appears to be premised on the fact that the percentage [fol. 488] relationship of the errors appears to be numerically small. As demonstrating the fallacy of Dr. Edwards' conclusion as to the effect of errors, reference should be had to page 3 of my exhibit which shows the effect that numerically small percentages may have upon the Southern Region net railway operating income and upon the net income, after providing for fixed charges but before dividends. My conclusion, for the reasons given in this

exhibit, is that the present study is wholly inadequate for the purposes for which the witness advocates its use. The present study is based on the results for one year, 1939. There is serious question as to whether the results for one year are representative, particularly in so far as the territorial comparisons are concerned, and this is dealt with in connection with the next section of my exhibit which is marked Identification No. 2.

By Chairman Aitchison:

Q. I wish you would turn to page 3. I do not understand that at all. I do not see any demonstration of the fallacy of any conclusion there.

A. Page 3?

Q. Yes, under Identification No. 1 of your Exhibit 18.

A. Well throughout Dr. Edwards' narrative, Mr. Chairman, which is in the record as Exhibit No. 2, he has made——

Q. He is talking about compensating errors, and you are trying to show that they do not compensate.

[fol. 489] A. I am very sorry, Mr. Chairman, but I could not hear that.

Q. I say, he is talking about compensating errors, and you are trying to show that they do not compensate, and you produce page 3, to show that. Now how does page 3 show that?

A. The fact in the case is that Dr. Edwards does not show definitely that they are fully compensating. He arrives at the conclusion that the difference may reflect one per cent, two per cent, three per cent, or some per cent up to five per cent; and I am demonstrating here that with five per cent and the expenses and revenues, it would amount to 27 per cent in net railway operating income; a five per cent spread would wipe out the net income.

Q. With respect to your column, Amount of Reduction: What is your 100 per cent?

A. Amount of Reduction?

Q. Yes.

A. That column represents the amount of reduction in freight service revenues, and 100 per cent would amount to $4,370,000 odd. That amount, however, is five and a half per cent of the net railway operating income, and

37.4 per cent of the net income. The main table is set up on that basis.

Q. Well, does it show any more than five and a half times one?

A. That is what it amounts to exactly. An error of one [fol. 490] per cent in the revenues amounts to an error of five and a half per cent in the net railway operating income, and 37.5 per cent in the net income.

Mr. Grubbs: May I proceed, your Honor?

Chairman Aitchison: Proceed.

By Mr. Grubbs:

Q. Please proceed to describe briefly that section of your exhibit, marked Identification No. 2.

A. This section of the exhibit shows the results of operations in the Southern Region compared with the Eastern District, including the Pocahontas Region, for each of the years 1928 to 1939 inclusive, for the 12 years, 1928 to 1939, and for the 10 years 1930 to 1939.

Chairman Aitchison: Is this proffer of testimony made on behalf of the lines in the Pocahontas Region, as well as the Southern District?

Mr. Grubbs: This proffer is solely on behalf of the Southern Railroads, Mr. Chairman.

Chairman Aitchison: Well, that does not answer my question.

Mr. Grubbs: I am very sorry sir. Then I did not understand your question.

Chairman Aitchison: I want to know if the Pocahontas lines are included in your definition of "Southern Lines" or on behalf of what lines this proffer of testimony is made?

[fol. 491] Mr. Grubbs: We have included in the exhibit, which we are now about to talk about, the Pocahontas Region.

Chairman Aitchison: I want to find out who your clients are.

Mr. Grubbs: I say, the Pocahontas Region has been included in the Eastern District.

Chairman Aitchison: That does not answer my question at all. I did not ask you that. This witness is called to the stand on behalf of certain respondents.

Mr. Grubbs: Yes.
Chairman Aitchison: Who are they?
The Witness: The Southern Lines.
Mr. Grubbs: Yes, the Southern Lines.
Chairman Aitchison: Including the Pocahontas Lines?
The Witness: No.
Mr. Grubbs: No, not including the Pocahontas Lines.
Chairman Aitchison: Well then, the answer is "No." All right; go on.

By Mr. Grubbs:

Q. Please tell us briefly what this section discloses?
A. It is designed to disclose three things——
Q. That is, this section?
A. Yes.
Q. Marked Identification No. 2.
A. Yes.
[fol. 492] Q. Proceed.
A. —to show that the rate of return of the Southern Region as appears from Line 16, under the caption "Southern Region," as compared with Line 16, under the caption "Eastern District, including Pocahontas Region," was less than the Eastern District, for each of the years 1928 to 1939, except 1938, which was 1.90 per cent as compared with 1.61 per cent for the Eastern District, and that the Southern Region rate of return was less for the 12 year period and also was less for the 10 year period. Secondly, to show that the Southern Region total freight service operating expenses, taxes, joint facility and equipment rents, and 5¾ per cent return, including passenger operating deficits, per revenue ton-mile, were greater than the Eastern District in every one of the years from 1928 to 1939 inclusive, for the 12 year period, and for the 10 year period, as appears from comparison of Line 19, under the caption "Southern Region" with Line 19, under the caption "Eastern District." The exhibit also shows the ration of the Southern Region per ton-mile results to the Eastern District, including Pocahontas Region, on Line 20, and these ratios are as follows: 1928-1.104; 1929-1.143; 1930-1.143; 1931-1.188; 1932-1.219; 1933-1.195; 1934-1.190; 1935-1.171; 1936-1.113; 1937-1.087; 1938-1.033; 1939-1.062; 12 year [fol. 493] period, 1928 to 1939-1.131; and 10 years, 1930 to 1939-1.134. This exhibit also shows the average haul of a

revenue ton in miles, which is substantially greater in the Southern Region than in the Eastern District for the entire period. The nature of the data contained in this section of the exhibit and the sources thereof are set forth on sheet 1.

Q. You mentioned, Mr. Kennedy, that this section of the exhibit is designed to show three things and you have referred to two of them. What is the third?

A. This exhibit illustrates, I think, the fallacy of depending upon the results of any one year for the purpose of making territorial comparisons or for the construction of cost scales designed to apply intraterritorially. For example, it will be noted from Line 20 of sheets 2 and 3, that while the ratio of the Southern Region to the Eastern District, comparing the per ton-mile results, is higher in all of the years 1928 to 1939 inclusive, for the 12 year period, and for the 10 year period 1930 to 1939, the year 1939 is the year in which the ratio of the Southern Region excess is the smallest, except one, which is the year 1938. The Southern Region excess ranges from the high of 21.9 per cent in the year 1932, to the low of 3.3 per cent in the year 1938, with the average for the 10 year period, 1930 to 1939, standing at 13.4 per cent, while the year 1939, the one [fol. 494] selected by Dr. Edwards, to make his study shows only 6.2 per cent excess.

By Chairman Aitchison:

Q. What do you have to say about the trend of those figures?

A. I am very sorry, Mr. Chairman, but I could not hear the question.

Q. I say, what do you have to say if anything, about the trend of these ton-mile ratios?

A. I think the trend is indicated, to a certain extent, by the comparison there of the year 1938 with the year 1939. The trend at that time was upward, in the matter of excess of the Southern Region.

Q. What about the trend as contrasted with every other figure that you have in your exhibit?

A. Well I think, Mr. Chairman, that the complete showing is reflected right there in that comparison for the ton-miles.

Q. Well the trend is downward, obviously, is it not, throughout the period as a whole?

A. Yes, sir, that is correct. Back of that period, however, it was down, and then it was up again.

Q. Well, if you were to project a straight line through there, do you have any idea as to where it would hit, about 1939?

A. No, sir, I have not, and I do not know as that would represent a correct reflection of the situation there.

[fol. 495] Q. It would be a reflection of the trend, would it not?

A. As to that period, yes.

Q. I asked about the trend. I did not ask for a comparison with 1939. That is not the trend.

A. Well my point is that the trend has now changed again, commencing with 1938, and now is up.

Q. How can you state that unless you know what 1940 and 1941 are?

A. You cannot.

Q. This does not show that?

A. No.

Q. Then how can you say that the trend is upward?

A. In my opinion that indicates that the trend at that time was upward. We had very unusual conditions to deal with in 1941 and 1942, that are not representative, and that everybody knows are not representative.

Q. Do you regard the change that you show here as being of significance enough to indicate a change in the trend?

A. I think so.

Chairman Aitchison: Continue.

By Mr. Grubbs:

Q. Mr. Kennedy, had you completed your statement on the subject you were discussing?

A. No, not quite.

Q. Continue, please.

A. In my opinion it is obvious that the relative status [fol. 496] between the Southern Region and the Eastern District is not static, but to the contrary, fluctuates widely from year to year and that a representative comparison can be secured only by considering a period of at least 10 years. It will be observed that the comparative status tends to show greater excess in years of low traffic volume

which contrasts with a smaller excess in years of high traffic volume.

By Chairman Aitchison:

Q. Just a moment now, before you leave those last sheets. The ton-miles for the Eastern District, including the Pocahontas Region, and in the Southern Region, are not shown on the exhibit, and would have to be computed; is that correct?

A. The revenue ton-miles appear in line-2, under each of the headings Southern Region and Eastern District respectively.

Q. Well, do I understand that line-20 refers to revenue ton-miles?

A. Line-20 refers to the ratio of operating expenses, taxes, joint facility and equipment rents, per revenue ton-mile, in each district.

Q. Well then, line-20 is a comparison of line-19 under the Eastern District, and line-19 under the Southern Region; is that correct?

A. Yes.

[fol. 497] Q. You do not have anywhere the revenue per ton-mile shown in a similar way, do you?

A. No, sir, not in this statement.

[fol. 498] Q. To what value did you apply your 5¾ per cent?

A. Sir?

Q. You applied your 5¾ per cent to what value?

A. That is applied to investment in road and equipment as carried on the carriers' records, plus cash, material and supplies as shown in their balance sheets.

Q. With respect to Section 19-A of the Act, you gave no attention to that?

A. No, sir, not in this connection. As a matter of fact, that would be a very difficult thing to do because the values where they have been cumulated, are only for perhaps one or two years and it would be very difficult to try to reflect those values back through the periods.

Q. Valuations were made with respect to some of these lines for recapture purposes, were they not?

A. Yes, but that is scattered. It was not made for all of them in the territory.

Q. Section 19-A of the Interstate Commerce Act says that the values so found shall be values for all purposes under the Act. You gave that no attention?

A. No, sir.

Q. If the values so found, at the dates thereof, were exceeded by the book investment, to that extent, both in the Eastern District, including the Pocahontas line, and in the Southern District, your value would be overstated?

[fol. 499] A. Well, I cannot conceive that the value is overstated. I think it has been stated here this morning that the lines in all the territories have exceptions to the valuation proceedings under the Valuation Act, followed by the Commission.

Q. I could not hear your answer.

A. You asked me if I did not agree that the investment in road and equipment was greater than found under the Valuation Act. I said I could not agree with that.

Q. Of course, those speak for themselves, and we will have to take notice of them.

A. I am sorry, but I did not hear you.

Q. I said, we will have to take notice of what they are. They speak for themselves.

A. Yes.

Q. Are you a valuation expert at all?

A. I am an accounting man in connection with valuation.

Q. Did you give consideration to the matters under Section 19-A of the Act, or take them into account at all when you determined whether the book investment, or whatever it was on the books, was the true value of the property for the purpose of rate making?

A. In this statement, no, sir.

Q. It simply depends upon the manner in which the books have been kept as to how much value there is?

[fol. 500] A. That is correct.

Q. I suppose some of these books go back to the Civil War, do they not?

A. They do, yes—well, not quite that far, but they are old.

Q. Do not some of them go back to the Civil War?

A. Well, I suppose that may be a true statement in isolated cases. Systems have been combined, and so forth.

Q. Of course, you are quite aware as a trained accountant, of the numerous criticisms that have been made of

untreated book investments, are you not, as a measure of value?

A. The only criticism I know of that has ever been made by the Interstate Commerce Commission was made by the Accounting Section of the Bureau of Valuation. Now, the jurisdiction of the accounts, as I understand it, is under the Bureau of Accounts of the Accounting Section of the Interstate Commerce Commission. There were exceptions taken by the Engineering and Accounting Section at valuation date when the valuation reports were prepared. I think it is significant, however, that none of the carriers have ever been required by the Bureau of Accounts to restate their accounts to the basis of those exceptions, except in one instance.

Q. What case was that?

A. Sir?

[fol. 501] Q. What case was that?

A. I do not believe I made myself clear. Oh, I said except in one instance.

Q. Yes. What case was that?

A. That relates to non-carrier land.

Q. You are not familiar with the case that went to the Supreme Court of the United States, the A. B. & C. Case?

A. No.

Q. Why did you not pay some attention to these 19-A values?

A. I think I pointed out that for the purpose of this statement, it would have been impractical to use those values, even if I knew what they were and agreed with them.

Q. It does not matter whether you agreed with them. They have been adopted and Congress has said that they shall be prima facie evidence in all proceedings under the Interstate Commerce Act as to the value of the properties as of the date thereof. This is a proceeding under the Interstate Commerce Act.

A. It would be impossible to find those values for all of the years with which I am dealing in this exhibit except perhaps 1936 and 1939 where the recommended values are used by Dr. Edwards.

Q. Did you pay any attention to the findings of value that have been made by the Commission in some of these [fol. 502] increased rate cases?

A. The only values I know of where you can use territorial totals are in those two years, 1936 and 1939.

Q. Where will that be found?

A. I think I am correct in stating that 1936 is in Ex Parte 128, and 1939 is presented here by Dr. Edwards.

Q. An exhibit was put in by the Commission in Ex Parte 148. Did you pay any attention to that?

A. There were no values found.

Q. There were elements of value. Did you make any use of them?

A. No, sir.

Q. As a matter of fact, the figures you have here largely exceed any of those figures, do they not?

A. I think that is correct, yes, sir.

Q. Or any combination of them?

A. I would not go that far. I do not know what the situation would be using the cost of reproduction as a single item representing value.

Q. At any rate, you have disregarded every figure with respect to value which this Commission has ever found?

A. I have.

Q. You used instead the judgment of bookkeepers whom you did not know running clear back to before the Civil War in some cases?

[fol. 503] A. Well, for quite a long period back the bookkeepers have made their returns under the direction of the Commission, and——

Q. The Commission was not created until 1887 and we did not have jurisdiction over accounts until a much later time.

A. I said, for quite a long period back; there has been a great deal of money spent since the Commission has had supervision of the accounting, a very substantial amount.

Q. Do you intend to come forward with any cost figures, leaving aside for the moment Dr Edwards' figures, or do you contemplate giving or have you tried to give us any cost figures?

A. My Identification No. 2 gives cost figures, I think, relative to the territorial status.

Q. Those are simply the aggregates, are they not?

A. Yes.

Q. By the way, do they include the class 2 and 3 and switching and terminal lines?

A. No. They are confined to the class 1 lines.

Q. Do you recommend to us that we use the method you have employed on 2 and 3?

A. Yes, sir. I am going into that a little further here.

Chairman Aitchison: Very well.

By Mr. Grubbs:

Q. Now please explain sheet 4.

A. The purpose of sheet 4 of this section of my exhibit [fol. 504] is to develop the extent to which the per ton-mile comparison would be affected if the formula and procedure followed by Dr. Edwards in the preparation of his Exhibit No. 3 had been applied throughout the 10 year period, 1930 to 1939, inclusive. In my opinion there can be no objection to the use of territorial aggregates comprising expenses, taxes, rents, and return, including the passenger operating deficits, reduced to per revenue ton-mile as the unit measure for territorial comparisons where the average haul in the territories compared is approximately the same and the composition of the traffic is approximately the same. However, it is known that the average haul in the Southern Region is substantially greater than in the Eastern District and that the composition of traffic in the Southern Region, the average per ton-mile results are unfavorable to the Southern Region by reason of its longer average haul, but are favorable to the Southern Region because of the relatively smaller tonnage of low grade heavy loading traffic, such as products of mines, included in the composition of its traffic as compared with the Eastern District. One of the principal objectives of the Edwards' procedure is to equalize these conditions and this is sought to be accomplished in the Edwards' procedure by separating the aggregate costs as between terminal and line haul and by further separating [fol. 505] these costs as between types of cars, such as box, gondola and hopper, etc.

Q. Now please explain how you proceeded to apply the Edwards' formula to the results for the 10 years, 1930 to 1939, inclusive.

A. In sheet 4 of my exhibit I have developed, using the separation of expenses given in Edwards' Exhibit No. 3, the percentages of the amounts in the aggregate that have been assigned to terminal and line haul, respectively,

for the Southern Region and the Eastern District, including Pocahontas Region. I then used the per ton-mile results shown for the 10 years, 1930 to 1939, on sheet 3 of this exhibit, converted to a cost per ton for the average haul and applied the percentages developed from the Edwards' exhibit to the cost per ton for the Eastern District and for the Southern Region, respectively, this developing the terminal proportions and the line haul proportions. Thereafter the line haul proportion of the cost per ton for the average haul in each of the districts, respectively, was raised to the basis of an average haul of 300 miles in each of the districts. The terminal proportion and the line haul proportion were then added together which produced a cost per revenue ton for a haul of 300 miles in the Eastern District, $3.28, and in the Southern Region, $3.86. For the purpose of making a further adjustment to cause the Southern Region cost per revenue ton for [fol. 506] 300 miles to reflect the Eastern District composition of traffic by car types, I first applied the Southern Region cost per hundred weight for 300 miles, given in Edwards' Exhibit No. 3, by car types, to the tons carried in the Southern Region in the year 1939, by car types, and developed the Southern Region aggregate cost on this basis, which was summarized in two groups; (1) gondola and hopper cars, and (2) all other cars. The revenue tons carried for the 10 years, 1930 to 1939, were then assembled for each district for the purpose of developing the percentage of products of mines which move exclusively in gondola and hopper cars, and all other commodities, practically all of which move in other types of cars. For convenience, the composition of the traffic, as represented by products of mines and all other commodities, respectively, was developed in the form of a ratio related to one ton and it was found that for the Southern Region, .469 moved in gondola and hopper cars, and for the Eastern District, .6351 so moved. The next step was to develop the cost per ton for the Southern Region in 1939 for a haul of 300 miles, based on Edwards' Exhibit No. 3, which shows $2.24 for gondola and hopper cars and $3.43 for all other cars, and $2.75 as the average for all cars. To convert the Southern Region average cost for all cars for 1939 to the basis of the composition of the traffic, as [fol. 507] above described, in the Southern Region for the

10 years, 1930 to 1939, the ratios of the composition per ton were applied to the Southern Region Region cost per ton for gondola and hopper cars and for all other cars, respectively, which produced an average cost for all cars of $2.86 over the 10 year period.

Chairman Aitchison: I do not see how you got that. You have taken the average for gondola and hopper cars, the average cost per ton, and then for all other cars another figure, and you add them together and say that that is the average cost per ton. That does not look right to me.

The Witness: That is shown in the lower group on sheet No. 4.

Chairman Aitchison: That is what I am looking at.

The Witness: We have there developed that the Southern Region cost in 1939 for gondola and hopper cars was $2.24; and for all other cars $3.43. We have also developed that the composition per ton carried in the Southern Region for 1939 was .4769 for the gondolas and .5231, and applying those percentages we get the equivalents which are shown in the fourth column.

Chairman Aitchison: That is the one I am looking at.

The Witness: Yes.

By Chairman Aitchison:

Q. Why did you add the fourth column to that?

[fol. 508] A. Well, that is a mathematical composition. If you include in your total 47.69 per cent at $2.24 and then also include 36.49 per cent at $3.43, the result you thus obtain gives you a total average for all cars of $2.86.

Q. That is your method of weighting?

A. Yes, sir.

Chairman Aitchison: All right.

The Witness: The ratio of the composition of the traffic in the Eastern District for the 10 years was then applied to the Southern Region cost for 1939 for gondola and hopper cars and all other cars, respectively, and this produced a cost of $2.67 per ton, considering the Eastern District composition of traffic. The ratio of $2.67 to $2.86 is .93, which reflects the reduction in the Southern Region cost per ton for 300 miles, which would occur, substituting the Eastern District composition of traffic as represented by products of mines and all other commodi-

ties, respectively. Having previously found the Southern Region cost per revenue ton for 300 miles to be $3.86, the ratio of .93 was then applied thereto which produced $3.59 as the average cost per ton for all traffic in the Southern Region for 300 miles, giving consideration to the Eastern District composition of traffic as above described. This compares with the cost per ton for 300 miles in the Eastern District, $3.28. The ratio of the [fol. 509] Southern Region to the Eastern District on this basis is 1.094. In my opinion this demonstrates, though I do not intend it as an endorsement of the Edwards' formula and procedure, that had his formula and procedure been applied for each of the years 1930 to 1939, inclusive, the results would show, considering all traffic, that Southern Region costs for the same average haul of 300 miles and the same composition of traffic as represented by products of mines and all other commodities, respectively, were approximately 9.4 per cent higher than the Eastern District, including the Pocahontas Region.

By Mr. Grubbs:

Q. Now please take up the final section of your exhibit that section being marked for identification No. 3.

A. This section of my exhibit shows the approximate effect of applying to the Southern Region traffic for the year 1939, both intra and interterritorial, the Eastern District average rate levels as represented by the Eastern District revenue per ton-mile, by commodities, for the approximate Southern Region average haul, by commodities.

Q. What do you show would be the effect on the Southern Region of making this application?

A. The aggregate effect for all commodities is shown on the last line of sheet 5 of this exhibit. The Southern Region gross freight revenues for the year 1939, which [fol. 510] appears in the first money column, were $449,393,933. The Southern Region constructive gross revenue at Eastern District rate per ton-mile for Southern Region average haul, shown in the second money column of sheet 5, amounts to $408,990,268. This indicates that the Southern Region freight revenues would be reduced by $40,403,665, if the Eastern District Revenue per ton-mile for the Southern Region average haul is applied to the Southern Region traffic.

Q. Does your exhibit show that the Southern Region constructive gross revenue would be less than the actual for all of the individual commodities?

A. No, as to numerous commodities in the Southern Region actual gross freight revenues are greater than the constructive gross revenues. In the aggregate, the actual revenue from these commodities is $22,112,532 greater than the constructive gross revenue, as shown in the third money column of sheet 5. The aggregate amount that Southern Region constructive gross revenues would be less than the actual, confines to the commodities each of which are less, amounts to $62,516,197.

Q. How would Southern Region net railway operating income be affected if these reductions had been made?

A. The Southern Region net railway operating income for the year 1939 amounted to $79,592,778. The application [fol. 511] of the Eastern District rate levels to the Southern Region traffic, as indicated in the foregoing, would reduce the revenues approximately $40,403,665, which in turn would reduce the Southern Region net railway operating income to $39,189,113.

By Chairman Aitchison:

Q. Did you make any adjustment for income taxes there?

A. No, sir.

Q. That would make a change, would it not?

A. Under present conditions, yes. The Government would lose it, though.

Chairman Aitchison: Proceed.

The Witness: If it developed that Southern Region lines had to apply Eastern District rate levels where they resulted in reductions but could not apply those levels where increases were involved, then the reductions in the Southern Region revenues would aggregate $62,516,197, which would result in practically wiping out the Southern region net railway operating income for the year 1939.

By Mr. Grubbs:

Q. Does your exhibit show the percentage relation of the actual gross freight revenues to the constructive gross revenues, as computed in your exhibit?

A. Yes, the ratio of the Southern Region to the Eastern District is shown in the last column and on the last line

of sheet 5 the average for all traffic is developed to be [fol. 512] 109.88 per cent.

Q. Aside from indicating the ratio of the Southern Region actual gross freight revenue to the southern Region constructive gross revenue at Eastern District rate per ton-mile for Southern Region average haul, does this figure have any other significance?

A. Yes, in my opinion it indicates, in a general way, that on the basis of the quantity and composition of Southern Region traffic in the year 1939, that the Southern Region general freight rate level is approximately 9.88 per cent higher than that of the Eastern District.

Q. I want to ask you here if you have undertaken to ascertain in computations you made to what extent the Southern rate level exceeds that of the Eastern District and if those commodities were excluded which move on rates in the South which are no higher than those in Official territory?

A. That computation would show that if those commodities where the actual freight revenues are greater than what the constructive freight revenues would be, the ratio is 1.2427 indicating that as to those commodities the level is approximately 24 per cent higher.

Q. I believe that the first sheet of your exhibit gives a full explanation of the procedure followed in developing the Southern Region constructive gross freight revenue, [fol. 513] but I will ask that you state it briefly.

A. The first step in the procedure was to find the revenue per ton-mile, by commodities, in each of the districts. Revenue ton-miles, by commodities, are not recorded in the existing statistics, so it was necessary to first develop ton-miles by commodities. This was accomplished for carload traffic by applying the average hauls for the year 1932, compiled by the Federal Coordinator of Transportation, and shown in Freight Traffic Report, Volume III, page 125, to the tons carried for the year 1939. For L.C.L. traffic the average hauls were taken from the data used by Dr. Edwards for the year 1939. The revenue ton-miles in the aggregate thus developed for the Eastern District were 100.23 per cent of the actual recorded revenue ton-miles for the year 1939, and for the Southern Region were 98.16 per cent of the actual, which in my opinion, indicates that the use of the 1932 average hauls, by commodities, does not produce any serious distortion. The actual gross reve-

nue per ton-mile was obtained by the use of these ton-miles by commodities. The average hauls differed, comparing the Southern Region with Eastern District for each one of the commodities, so that it was necessary to adjust the revenue per ton-mile to a common level and for the purpose of this statement, the Eastern District was adjusted to the basis of the Southern Region. The average hauls, however, were all computed per road and do not represent [fol. 514] the territorial average hauls. In order to develop, as close as possible, from existing statistics, the true average haul, the ton-miles for each commodity were divided by the number of tons originated or the number of tons terminated, whichever was greatest, for the same commodity for the year 1939. This produced, in every case, average hauls longer than the statistical average hauls per road. The Eastern District revenue per ton-mile for the Eastern District average haul, by commodities, was then adjusted to what it would be for the Southern Region average haul, by commodities, by the use of the progression in the Docket No. 13494 K-2 Scale. This procedure produced an approximation of the Eastern District revenue per ton-mile for the Southern Region average haul for each commodity which compares with the Southern Region actual revenue per ton-mile for the same haul. Thereafter, the development of the Southern Region constructive gross revenue at the Eastern District rate per ton-mile for the Southern Region average haul is merely a matter of mathematics.

Q. Mr. Kennedy, is there any further statement you wish to make?

A. Yes. I mentioned in Identification No. 1 some objections that we had to the count of cars used for the purpose of developing costs in connection with switching service. [fol. 515] The cost of performing intra and inter-terminal switching is included in the aggregate switching costs used by Dr. Edwards, and as well, the cost of making switch deliveries or switch origins for connections on road haul traffic is likewise included. Tariff charges are published for both classes of switching and collected by the line performing the switching. These costs should have been eliminated in stating the costs for performing road haul service. Dr. Edwards has not included the cost of switching performed by the switching and terminal companies and it is proper that they be omitted because of the collection of

switching tariff charges. This applies to all of the rate territories and with varying effect on each. For the Southern Region, this requires that about 25 per cent of the origin and destination switching cost and about 21 per cent of the interchange switching cost be excluded from Exhibit 3 in constructing cost scales.

Q. Does that conclude your statement?

A. That concludes my statement.

Mr. Grubbs: I offer Exhibit No. 18 in evidence, if the Commission please.

Chairman Aitchison: Is there any objection to the receipt in evidence of Exhibit 18? (No response.) It is received.

(Exhibit No. 18, Witness Kennedy, received in evidence.)

[fol. 516] Chairman Aitchison: You may cross examine. Mr. Norman.

Mr. Norman: I will state that many of the questions I had expected to ask Mr. Kennedy have already been asked of him. I will not undertake to go back over that ground.

Cross-examination.

By Mr. Norman:

Q. I will ask you, Mr. Kennedy, if any place in your study you have undertaken to apply the criticisms and suggested corrections to both the Southern and Northern territory and arrive at what the comparative result would be if that were done?

A. No, sir.

Q. Have you not throughout your exhibits included the Pocahontas lines in the Northern or Eastern District as you call it?

A. Yes, sir.

Q. Referring to sheet 2 of your Identification No. 2 and sheet 3, I will ask you if you have made any effort to determine what would be the effect on the results which are shown had you excluded the Pocahontas lines from both Southern and Northern or Eastern Districts?

A. No, sir.

Q. Do you not know, Mr. Kennedy, from past studies that you have made or that you have seen made, that the exclusion of the Pocahontas lines from both would reverse the

[fol. 517] showing made at the bottom of those sheets, and would actually show a lower per ton mile in the South than in the North or East?

A. Well, Mr. Norman, even if that did——

Chairman Aitchison: Please answer the question, and then you may make your explanation.

The Witness: Well, the answer is "no".

Chairman Aitchison: Now, you may make any explanation that is necessary.

The Witness: If that situation were developed as Mr. Norman says, to make a comparison on the basis of the Eastern District only as compared with the Southern Region, the mere fact that those per ton mile earnings similar to the ones I have on line 20 showed that the Eastern District's were under the Southern Region's, would not be conclusive because the Southern Region average haul is longer, and those results must be adjusted for that reason.

Chairman Aitchison: I am not sure I understood just what the question was, and what the answer "no" meant.

Mr. Norman: I understood him to say that he did not know. I asked him if he did not know that that would result, and he said "no". That, I take it, means he does not know.

By Mr. Norman:

Q. That is correct, is it not?

A. Correct.

[fol. 518] Chairman Aitchison: Proceed.

By Mr. Norman;

Q. Now, Mr. Kennedy, you arrive,—you say the average haul would affect it—you arrive in your testimony at the conclusion that the Southern Region costs for the same average haul of 300 miles and the same composition of traffic as represented by products of mines and all other commodities, were 9.4 per cent higher than the Eastern District. There again you have included in the Eastern District the Pocahontas lines, have you not?

A. Yes.

Q. Do you know what would be the effect on that calculation if you took out the Pocahontas Lines from both South and East?

A. I do not.

Q. Is it not true that the Pocahontas lines are the lowest cost per ton mile of any lines in the United States?

A. I think every statistical analysis we have been able to make indicates that.

Q. But you have not undertaken to show what effect on any of these figures you have made, would result from eliminating the Pocahontas lines in your calculations?

A. No, sir.

Q. Now, I think I understood you to say in answer to questions from the Bench that the valuations you have used are the book valuations, and that you have not considered [fol. 519] any of the valuations arrived at by the Interstate Commerce Commission.

A. That is correct.

Q. Is that right?

A. Yes.

Mr. Norman: That is all.

Chairman Aitchison: Mr. A. L. Reed.

By Mr. Reed:

Q. Mr. Kennedy, are we to understand from your testimony and the exhibit that you have not prepared any comparable cost figures with those submitted by Dr. Edwards?

A. Yes. That is correct.

Q. You have tested his cost figures by a theory of your own as to whether or not they meet, in your judgment, the actual costs of handling the traffic?

A. That is right, yes, sir.

Q. What is your judgment as to whether or not the figures submitted by Dr. Edwards for the handling of box car traffic in the South are too high or too low as compared with the actual cost of performing that service?

A. Other than being able to determine that there are a great number of errors in Dr, Edwards' procedure, I would not be able to say just what the effect would be.

Q. From the calculations you have made, you have reached no conclusion as to whether or not his figures for [fol. 520] the handling of box car traffic are too low. That is one question.

A. No, sir.

Q. The next question is, you have made no calculations and have reached no judgment or no opinion as to whether

or not the figures are too high for the handling of box car traffic?

A. I pointed out two instances in which they are high. Whether or not that is the final effect, if all of the criticisms and objections I have pointed out here were given effect, I cannot tell.

Q. You are not prepared to give us your final conclusion with respect to the calculations you have made concerning the handling of box car traffic?

A. No, sir.

Mr. Reed: Thank you.

Chairman Aitchison: You have, of course, generally taken exception to the method of the Edwards' exhibit. Then you have made certain specific comparisons with Eastern territory including the Pocahontas Region.

By Chairman Aitchison:

Q. Have you made any comparison; made any checks or reached any conclusions with respect to like comparisons between Southern territory and the Southwest and Western Trunk Line territory?

A. No, sir. I have not done that.

[fol. 521] Q. Why not?

A. Well, the first reason is, I was somewhat embarrassed with the matter of having sufficient time to complete that which I was undertaking. Furthermore, I think it is a fair statement that so far as the interest of the Southern Region lines is concerned, we are more interested with the showing as between it and the Eastern District than otherwise.

Q. The Edwards' exhibit has been in your possession for some time, has it not?

A. Yes. We have been working on it for some time.

Q. In fact, it has been in your possession about 14 months, has it not?

A. I think that is a correct statement.

Q. Yet you have not found time to make any comparison between the Southern rates and those in either Western Trunk Line territory or Southwestern territory, and have confined your criticism entirely to the East?

A. That is correct. I found myself fully occupied, dealing with that situation.

Q. Did you regard it as a matter of no moment, or were you instructed? How did it happen?

A. Oh, no, sir. Not because we considered it of no moment. Simply because our interests were more affected by this comparison than they were by other comparisons. I [fol. 522] devoted as much time as I had to that.

Q. Were you given instructions to devote your time to the comparison between the East, including the Pocahontas Region and the South?

A. No.

Q. Or did you determine that yourself?

A. No. In fact, it was the other way around. I was asked why I had not made the other, and I answered that question the same as I have answered you here.

Q. Somebody else asked you the same question that I asked you?

A. Yes, sir.

Chairman Aitchison: Is there any further cross examination?

Mr. Eshelman: I have one or two questions, Mr. Chairman.

Chairman Aitchison: Mr. Eshelman.

Mr. Eshelman: My questions are largely for clarification.

By Mr. Eshelman:

Q. At page 13 of your statement of testimony, not your statistical exhibit, but your statement of testimony, in the second line, you refer to average hauls for the year 1932 as taken from the Coordinator's Study.

A. Yes.

[fol. 523] Q. Are those average hauls for certain commodities or commodity groups?

A. Yes, sir. Those hauls are there stated by commodity groups according to the Commission's Commodity Classification.

Q. Were they individual commodities or were they commodity groups?

A. They were commodity groups, according to the Commission's prescribed Commodity Classification.

Q. Were those average hauls country-wide average hauls or were those regional average hauls?

A. They were regional.

Q. Regional?

A. Yes, sir.

Q. About in the fifth line of that same statement there is a reference to tons carried.

A. Yes.

Q. Are those figures that you there refer to the figures for the individual regions?

A. Yes, sir.

Q. Are those the figures which contain duplications by reason of joint hauls?

A. They are, yes, sir.

Q. Further down on the same page you say in substance that in order to develop as close as possible the true [fol. 524] average haul, you divided the ton-mile for each commodity by the number of tons originated or terminated, whichever were greatest, for 1939. Does your statement show the results for each of those commodities or is this the only statement in general that you make on that?

A. The statement itself, I think, speaks for itself. It is a five-page statement marked Identification No. 3, shown by commodities.

Q. You are more familiar with that than I am. Will you state what the answer is.

A. Yes. The answer I think to your question is "yes." It shows it by commodities.

Q. The difference in the average hauls?

A. Oh, you mean the figures for the average hauls?

Q. Yes, by commodities.

A. No. They are not shown on the statement, although I have them on the work sheet.

Q. Would you say whether the actual average hauls as you have arrived at them by those calculations, show a narrower relationship as between the South and the East than the statistical average hauls per railroad derived from the figures available at the Commission?

A. The relationship there is hardly changed. If I understand what you are asking me, as to a comparison of the spread that exists in the average haul as computed by [fol. 525] roads, and the spread which exists in the average hauls as computed by me, that spread is hardly changed.

Q. I was not talking about the average hauls as computed by roads, but the actual hauls per shipment.

A. (No answer.)

Q. Did this computation you made give you the actual hauls per shipment within the regions?

A. They did, according to the method I have used, yes.

Q. To what extent do your statements rely upon statistical average hauls as commonly reported in arriving at your figures?

A. They rely first, I think, for the purpose of computing ton miles. For example, we applied the hauls as shown in the 1932 Coordinator's Report to the actual tons carried in the year, and thereby got the ton miles. Thereafter, what might be termed the actual territorial average haul by ton-miles as computed, was divided by the tons originated or the tons terminated, whichever was greatest, which then produced a figure higher than the per road haul.

Q. You took no account, I take it, of differences in joint line hauls in the different territories in arriving at your average hauls?

A. Well, the question of joint line hauls was wiped out of the picture, I think, when I used the tonnage originated or tonnage terminated in the territory.

[fol. 526] Q. In the adjustment of your figures do you use your statistical average hauls or the average hauls as you last described them for the purpose of adjusting the costs as between the two groups?

A. No. I used the computed territorial haul. That is the reason I computed the territorial haul.

Mr. Eshelman: Thank you.

By Chairman Aitchison:

Q. Have you any idea what is going to happen to the value figures that you used when the reorganization of these Southern lines is concluded and the books are set up following the Supreme Court's decision in the A. B. & C. case?

A. I have a general idea that the tendency has been to decrease. However, that situation applies, of course, to the whole Southern Region territory and Eastern territory to the extent that reorganization has taken place in those territories.

Q. Is the amount of lines being reorganized in Official territory as great, greater than or smaller than in the South?

A. I am sorry, but I did not get that.

Q. I just want to find out whether or not in Official territory, relatively, there are more lines under reorganization than in the South?

A. Well, I am not prepared to answer that. I have not [fol. 527] checked that.

Chairman Aitchison: Is there any further cross-examination of Mr. Kennedy?

Mr. Smelker: I have two or three questions, Mr. Chairman.

Chairman Aitchison: Mr. Smelker.

By Mr. Smelker:

Q. Mr. Kennedy, can you make available to the Commission's staff in Washington the car count in switching service upon which you predicated the statement that switching costs in the Edwards' exhibits are in error?

A. Yes, sir.

Q. Can you give us similar access to all of your working papers?

A. Yes, sir.

Q. That includes the papers used in computing the average haul per shipment?

A. Yes, sir.

Q. Are they here?

A. Yes, sir.

Q. The Commission's staff can have access to them here?

A. They may examine them at any time.

Chairman Aitchison: Is that all, Mr. Smelker?

Mr. Smelker: Yes. That is all.

Chairman Aitchison: Is there any further cross-examination of Mr. Kennedy? (No response.) Is there [fol. 528] any redirect, Mr. Grubbs?

Mr. Grubbs: No redirect, your Honor.

Chairman Aitchison: You are excused, Mr. Kennedy.

(Witness excused.)

Chairman Aitchison: Call your next witness.

Mr. McGehee: Mr. Tassin.

Chairman Aitchison: Raise your right hand and be sworn.

J. S. TASSIN was sworn and testified as follows:

Direct examination

By Mr. McGehee:

Q. Please state your name, your residence and your occupation.

A. J. S. Tassin, residence Arlington, Virginia, occupation General Statistician, Southern Railway System Lines.

Q. How long have you been in the accounting department of the Southern Railway System Lines?

A. 39 years.

Q. Without going back 39 years, just state briefly what has been your experience there?

A. Since 1932 I have been General Statistician. From 1920 to 1932 I was Auditor of Valuation. From 1914 to 1920 I was Valuation Accountant. For about four years prior to that time I was Special Accountant.

Q. That is sufficient.

[fol. 529] A. And other positions ahead of that.

Q. Mr. Tassin, have you prepared certain exhibits for introduction in this case?

A. I have.

Mr. McGehee: Mr. Chairman, these exhibits are in 12 sections. Do you want to number those separately, or just number the first one and the others as sub numbers?

Chairman Aitchison: Off the record.

(Discussion outside the record.)

Chairman Aitchison: Back on the record. Exhibits Nos. 19 to 30, both inclusive, may be marked for indentification.

(Exhibits 19 to 30, both inclusive, Witness Tassin, marked for identification.)

By Mr. McGehee:

Q. Mr. Tassin, did you prepare these exhibits Nos. 19 to 30, both inclusive?

A. I did.

Q. Are the statements made therein true to the best of your knowledge and belief?

A. They are.

Q. Now, have you certain comments which you wish to briefly make?

A. Yes. I wish to make a very brief statement with respect to each of these exhibits. I think they are complete enough and clear enough not to require more. [fol. 530] Exhibit 19 bears the same relation to the other exhibits that the head notes in the Commission's report has to the text. I merely hit the high spots there and it is not intended to be a summary of the other exhibits. With that comment, I pass up Exhibit No. 19.

Mr. Little: Mr. Chairman, may the witness refer to his stamp numbers on these as he goes along for the purpose of sure identification?

The Witness: Identification No. 1 is Exhibit No. 19.

Chairman Aitchison: I will tell you how you can check that, Mr. Little. Just add 18 to the number he has there, and you will have the proper exhibit number.

Mr. Little: Thank you.

By Mr. McGehee:

Q. Proceed, Mr. Tassin.

A. These exhibits, of course, are directed to my position with respect to the cost finding procedure followed by Dr. Edwards in this case and the valuation procedure followed by the Bureau of Valuation in supplying Dr. Edwards with certain transportation values which he has used. My first comment is with respect to Dr. Edwards' Exhibit No. 3 in which he has provided certain cost scales. My comment on that exhibit is that assuming, but not conceding, the correctness of those cost figures, they are, nevertheless, of no value whatever because there is not any traffic moving to which they can be applied.

[fol. 531] Identification No. 2, Exhibit No. 20, is devoted to that purpose. For example, look at the very first sheet lettered "A". We show the roads in the Southern Region. We show the relative participation of those roads in the costs of the Southern Region and I also show with respect to each road how many times it dominates particular commodities and the number of commodities in which it participates; how many of those commodities are more than its participation in cost; and how many of those commodities are less than its participation in cost. For example, let us take commodty No. 163 which, I believe, is

sugar beets. In 1939 only one road in the South handled that particular commodity. The cost of the remaining 26 roads had no particular bearing whatever on the cost of handling that particular commodity. Now, that is an extreme case, but it establishes the principle. We cannot sell oranges at the price of apples. The Southern Railway, for example, objects most strongly to only 22 votes in determining costs applied to traffic in which it has a 60 per cent interest.

The intervening pages list each of the commodities, and I wish also to call attention to sheet lettered "G" where I show commodity classes not carried. Commodity No. 163 is not carried by 26 roads. In my opinion the costs of those 26 roads had nothing to do with the determination [fol. 532] of carrying commodity No. 163 in the South in 1939. Commodity No. 162 was not handled by 24 out of 27 carriers. That illustrates generally the nature of the exhibit. There is not a matching of like with like, and for that reason I show that even assuming the correctness of the cost scales, they are of no value because the participation by the roads in the traffic moving is greatly different from the participation of those same roads in the cost which Dr. Edwards has computed. With that comment I will pass up Identification No. 2, Exhibit No. 20. Again, I say, with respect to that exhibit I assumed but did not concede the correctness of the cost scale.

The next exhibit, Identification No. 3, Exhibit No. 21 shows that the cost scales, so far as they applied to, and are computed for, the South are bound to be in error because the result of those cost scales is contradicted by other known facts. We know, for example, that rates in the South are higher than in the North. We know that the revenue unit level in the South is higher than in the North. Now, in view of those two facts, if costs in the South were higher than in the North, we would be obliged to have better operating and cost ratios in the South than in the North, and that has not obtained over the past 21 years.

Q. You mean, if costs were less in the South?

[fol. 533] A. If costs were less in the South than they are in the North, with rates higher and the revenue unit higher, we would be obliged to have better operating and cost ratios in the South over a period of 21 years than

we have had. Over that period our ratios are worse than the corresponding ratios in Official territory.

I do not want to take too much time on any of these exhibits, but I would like to call attention to the graphs which establish the comparisons to which I have just alluded. The first is on page No. 5. You will find them all the way through the book. Now, you will also find in this exhibit my solution of the so-called Pocahontas problem. I, of course, included the Pocahontas Region lines in Official territory because they are operating under the same classification and the same general scheme of rates as the other roads in Official Classification territory You can no more exclude the Pocahontas lines from consideration in connection with that territory because of their heavier coal tonnage than you can afford not to exclude the Pennsylvania and the Baltimore and Ohio and other roads that carry coal in excess tonnage than that carried by the Pocahontas lines. Be that as it may, the question of how properly to deal with the situation like that presented by the volume of coal tonnage by the Pocahontas lines [fols. 534-535a] and by other lines in Official territory or heavy loading commodities, can be dealt with in several ways. There are several simple ways of statistically facing that problem. In arriving at the territorial averages or averages for any group of railroads, we should not limit ourselves to a comparison of the relative standing of those roads with respect to volume of revenues and expenses. For example, from the standpoint of public convenience and necessity——

Chairman Aitchison: I think we had better stop this argument right here, unless you will waive your time on final argument, Mr. McGehee.

Mr. McGehee: I do not think I will waive my time.

Chairman Aitchison: Then I suggest that you proceed to have the witness answer specific questions.

Mr. McGehee: All right.

The Witness: I think the exhibit will be found sufficiently explanatory, and I will proceed, and pass it up.

Chairman Aitchison: It is now noon and the practitioners hold their convention this afternoon commencing at 1:30 P. M. It might be well for us to suspend at this time until 9:30 tomorrow morning.

(At 12 o'clock M., September 23, 1942, adjourned to 9:30 o'clock A. M. September 24, 1942.)

[fol. 536] Claypool Hotel, Indianapolis, Indiana,
September 24, 1942.

Met pursuant to adjournment at 9:30 A. M.

Before: Division-2 of the Commission, Hon. Clyde B. Aitchison, Chairman of the Commission, (presiding); Hon. Walter M. W. Splawn, Commissioner; Hon. J. Haden Alldredge, Commissioner.

Present: Paul O. Carter, Examiner; W. J. Kobel, Examiner; T. Leo Haden, Examiner; Mr. John J. Murphy, South Dakota, Mr. George McConnaughy, Ohio; and Mr. W. H. Scott, South Carolina, comprising a Cooperating Committee of State Commissions.

Appearances: As heretofore noted.

PROCEEDINGS

Chairman Aitchison: Come to order. Mr. Giessow, I understand that you have a motion which you want to submit.

Mr. Giessow: Yes, if the Commission please. I am doing this for Mr. Rosenbaum, of St. Louis.

Chairman Aitchison: If this is to be filed as a document in the proceeding, the parties are entitled to ten days, to answer.

Mr. Giessow: As I say, if the Chairman please, I am not [fol. 537] doing this for myself. Mr. Rosenbaum expected to be here at the beginning of the hearing, but was not able to get here.

Chairman Aitchison: Well, if you want to make an oral request, on the record, that this hearing be deferrd for a particular reason, you may do so, and we will pass on the motion at this time; but if you want to have this document filed as a separate document in the proceedings, I say, the parties are entitled to ten days, in which to answer.

Mr. Giessow: I will make the oral request at this time, then, Mr. Chairman, on behalf of Anheuser-Bush, Inc., of St. Louis, Missouri, for an indefinite postponement of these hearings on the ground that there has been a complete disturbance of the normal movement of traffic, and

traffic conditions generally, due to the orders of the various regulatory bodies.

Chairman Aitchison: Motion denied.

Mr. Giessow: Thank you.

Chairman Aitchison: Proceed with Mr. Tassin.

J. S. Tassin, resumed:

Mr. McGehee: If the Commission please, we are very anxious to do all that we can to expedite this hearing. With respect to the further questions concerning which [fol. 538] Mr. Tassin might testify, he has already testified fully and completely before the Commission in the Automobile Case, Docket No. 28190. Therefore, the fundamental facts that we want to bring to the attention of the Commission, in addition to being set forth in Mr. Tassin's exhibits, have already been developed in that record; and with that, I have no further questions to ask of Mr. Tassin, relying on his exhibits, which I have either offered in evidence, or now offer.

Chairman Aitchison: Mr. Reporter, I am not sure that I heard all of Mr. McGehee's statement. Will you read it, please.

(The statement was read.)

Chairman Aitchison: Do you mean that you now offer Mr. Tassin's exhibits 19 to 30?

Mr. McGehee: Yes.

Chairman Aitchison: You understand, of course, that the record in the Automobile case is not before us here.

Mr. McGehee: Yes.

Chairman Aitchison: I think also that some explanation is due the Commission for putting in exhibits which are so extremely argumentative.

Mr. McGehee: Well, if the Chairman please, you indicated yesterday, and you not only indicated, but you made it very clear, that there was no different rule to be applied [fol. 539] to witnesses for the Commission, than the rest of the witnesses. Now, if you say that our testimony, or that our exhibits are argumentative, I direct your attention to the testimony and exhibits of Dr. Edwards. We can only meet argument with argument. When it comes to a question of valuation, which is very highly argumenta-

tive, it is difficult to draw the line between argument and factual matter.

Chairman Aitchison: Well, Mr. Tassin here has not only analyzed the Commission's decisions, but he has even changed the rules of law that the Commission has laid down.

Mr. McGehee: Maybe some of them ought to be changed, Mr. Chairman, but he should not undertake, of course, to do that. So far as we are concerned, in this valuation proposition, we are not willing for the Bureau of Valuation to put out a lot of figures not passed upon by the Commission. Before we ever accept any such figures, we want you to pass on them, and we want to bring them to your attention fully. For example, just as one illustration, take the Northern Alabama Railroad, formerly a separate and distinct corporation, but now having been taken over by, and become a part of, the Southern Railway System. Your Valuation Department just discards it as nothing; it is not in here at all; and that is just one of many other [fol. 540] similar items.

Chairman Aitchison: Well, of course, exhibits of this sort simply cast the burden on the Commission, or on any reviewing body, of determining what is factual matter, and what is not.

Mr. McGehee: But you have the same burden cast on you, with respect to your own witnesses, Mr. Chairman.

Chairman Aitchison: And you have the right to object to any portion of any exhibit which is argumentative, or otherwise improper.

Mr. McGehee: And I did not do it in this case, sir, because, in a proceeding of this kind, I do not think it is the thing to do.

Chairman Aitchison: Is there objection to the reception of these exhibits? (No response.) Hearing none, they are received.

(Exhibits 19 to 30, both inclusive, Witness Tassin, received in evidence.)

Mr. McGehee: That is all on direct.

Chairman Aitchison: Cross examine.

Cross-examination.

By Mr. A. L. Reed:

Q. Mr. Tassin, have you examined the underlying data that were utilized by Dr. Edwards in the preparation of his Exhibits 2 and 3?

A. Yes.

[fol. 541] Q. Have you studied his cost figures relating to the handling of boxcar traffic in Southern territory?

A. I have not particularly gone into that feature of it, no, sir.

Q. In any of the exhibits which you have filed, being Nos. 19 to 30, both inclusive, have you submitted any cost figures for the handling of boxcar traffic in Southern territory?

A. I have in my exhibits set forth cost figures pertaining to less than carload freight in boxcars over certain routes, and in certain trains, over the Southern Railway.

Q. Have you prepared comparable cost figures to those submitted by Dr. Edwards in any of the exhibits which you have filed?

A. I have computed costs on my own basis. I do not accept the basis of Dr. Edwards.

Chairman Aitchison: The question is, have you made any separate estimate of the costs counsel is referring to, in the exhibits which you are submitting here?

The Witness: Not to be offered as a substitute, no, sir. I have made independent costs in these exhibits.

Chairman Aitchison: In what exhibits?

The Witness: You will find some in Exhibit No. 25, referring specifically to page 23; but they are scattered all through. Exhibits 25, 26 and 27 deal with less than car-[fol. 542] load freight. I have costed the less than carload freight over specific routes, over the Southern Railway System.

By Mr. A. L. Reed:

Q. Have you included in your Exhibits 25, 26 and 27, to which you have just referred, any comparable costs for the handling of boxcar traffic,—and I am not limiting that, now, to less than carload traffic—in Southern territory, to the costs submitted by Dr. Edwards?

A. I will have to answer that question this way, that any costs which I have computed are not in comparison

with, but in contrast to, those computed by Dr. Edwards.

Q. Very well. Have you formulated any opinion, based on the studies which you have made, as set forth in your Exhibits 19 to 30, both inclusive, as to whether or not the costs submitted by Dr. Edwards for the handling of boxcar traffic in Southern territory are too high or too low?

A. From my experience, and in the light of the examination that I have made of Dr. Edwards' costs, and his cost-finding procedure, I would say that both suppositions are correct; that is, they may be either too high, or too low; but in either case they are incorrect.

Q. What is your opinion as to whether or not they are too high, or too low?

A. My opinion is that those are the facts.

[fol. 543] Q. Well, you cannot have both opinions.

A. Yes, sir, because, computed the way those costs have been computed, they can lie on either side of the correct determination of costs.

Q. Then you have reached no conclusion as to whether or not any errors which may have been committed would be errors that would produce a cost that was too low to handle boxcar traffic, or too high to handle boxcar traffic; am I correct?

A. It may be either.

Mr. A. L. Reed: If the Chairman please, I asked the witness if he had formulated any opinion. Now, he either has or has not. He cannot say that it may be either, because it cannot be either, if he has formulated any opinion.

Chairman Aitchison: The question is, have you formulated any opinion on that subject?

The Witness: Yes.

Mr. A. L. Reed: All right.

By Mr. A. L. Reed:

Q. Now I will ask you to state whether or not the errors which have been committed show that Dr. Edwards' cost studies for the handling of boxcar traffic in Southern territory are too low?

A. Your question is based on the assumption that there is only one error. The errors are multitudinous.

[fol. 544] Q. That does not answer my question.

Chairman Aitchison: The question is based on the assumption that you have reached a conclusion.

The Witness: But he is assuming that the conclusion is either right or wrong, and that assumption is equally erroneous, because there can be but one conclusion, and that is that the thing is wrong.

By Mr. A. L. Reed:

Q. You have stated that you have reached a conclusion with respect to the matter. Are you unwilling to state that conclusion on this record with respect to the cost of handling boxcar traffic in Southern territory, particularly with respect to whether or not the costs shown by Dr. Edwards are too high or too low?

A. I have been trying my best to tell you that I have formed an opinion, yes, sir, and what my opinion is.

Mr. A. L. Reed: That is all.

Chairman Aitchison: Is there further cross examination?

Mr. Norman: Yes, please.

Chairman Aitchison: Mr. Norman.

By Mr. Norman:

Q. Mr. Tassin, I would like for you to point out, in these rather voluminous exhibits, where you have arrived at any relative cost as between the territories, Southern territory and Northern territory?

A. In Exhibits 21 and 22, in toto.

[fol. 545] Q. The exhibits are very voluminous. Can you tell me what you have set forth there as to the relative cost of transporting traffic in Southern territory as compared with the cost of transporting traffic in Eastern territory?

A. Based on a period of 21 years, as shown on the inside title sheet of Exhibit No. 22, Identification No. 4, based upon the four series of comparisons offered. In the first series the cost in Southern territory is obviously greater than the cost in Official territory, in view of the fact that, where Official territory needs an increase of 10 per cent, Southern territory needs an increase of 13 per cent, in order to put — of them on a comparable basis in the matter of earning a return on investment.

Q. So that you arrive, then, at a difference in cost of about 3 per cent; is that correct?

A. 3 per cent of the gross, yes, sir, which is not to be sneezed at.

Q. And in that calculation, where do you put the Pocahontas lines?

A. Where they belong,—in Official territory.

Q. Is it your opinion that, in determining the relative transportation conditions as between other sections of the country, the Pocahontas lines should be used to the advantage of one and the disadvantage of the other?

A. I am not speaking either of advantage or disadvan- [fol. 546] tage. The Pocahontas lines belong in Official territory, let the chips fall where they may.

Q. Have you made any calculations to determine the effect, or the result of leaving the Pocahontas lines entirely out?

A. No, sir, I have not, because I would consider that to be an erroneous assumption.

Q. Have you any informed opinion as to the effect upon this 3 per cent, we will say, of leaving the Pocahontas lines out of Eastern territory?

A. In my studies, I have weighted the participation not only of the Pocahontas lines, but of all lines, on various bases. Sometimes one or the other of those bases gives the correct answer.

Q. I thought you just said that you did not have any comparison. What is the comparison?

A. The comparison is that when you rate those roads in proportion to the greatest common experience, the Pocahontas lines and other very prosperous lines, and also abnormally depressed lines, are practically equated out of the picture.

By Chairman Aitchison:

Q. What do you mean by "common experience"? I do not understand that.

A. I mean, Mr. Chairman, by common experience, taking any ratio, whether it be operating ratio, or full cost ratio, [fol. 547] I take all of the roads that are under review, and I ascertain the greatest number of roads that have had the same experience with respect to that particular ratio; that have enjoyed the same ratio, or experience with the same ratio. That is the greatest common experience.

Q. Well, do you mean by that, that you take roads having a particular operating ratio of expenses to revenues, and

have considered those roads as having had a common experience?

A. That is one of the comparisons that I have offered, yes, sir.

Q. Well, now, I am trying to find out exactly what you mean when you talk about common experience.

A. Well, for example, I would consider——

Q. Answer this question, now: Have you taken roads which happen to have the same ratio, or approximately the same ratio, of operating expenses to operating revenues, and said that those roads have had a common experience?

A. In that respect, yes.

Q. Well, supposing that one of the roads happened to get a new operating officer who was a crackerjack, and he was able to cut that ratio down. That would take that road out then, would it not?

A. Well, as I say, that is only one portion of the comparison.

[fol. 548] Q. Answer the question.

A. Pardon me?

Q. That would take that road out of that particular comparison, would it not?

A. Yes, sir.

Q. Because it would no longer be having a common experience with respect to the operating ratio?

A. But while they enjoy the same operating ratio, they have a comon experience with respect to that ratio.

Q. Supposing something went "sour" so to speak, with one of the roads, so that the operating ratio went up. Could those two roads then be said to have a common experience?

A. Only in the one particular respect, that I have stated. An interruption of the common experience is something else.

Q. In the instance that I have cited, in the case of the one road, the ratio goes up, and in the case of the other, it goes down.

A. I see what you are getting at.

Q. The same thing would happen if one of them got a lot of high grade traffic, and the other one had some severe rate cuts.

A. I see what you are driving at. An identical operating ratio does not imply identical operating conditions, or identical wisdom of management.

Q. Does it imply a common experience?

[fol. 549] A. In respect only to the purpose for which it is to be used,—the experience with the particular ratio.

By Mr. Norman:

Q. Well now, Mr. Tassin, I would like to have you answer me in plain, ordinary language that a layman can understand, and tell me whether or not you have arrived at any conclusion with respect to the effect upon relative costs, as between the North and the South, of leaving the Pocahontas lines out of the Eastern District, and not considering them at all.

A. Well now, that question——

Chairman Aitchison: No. You can answer that question, as to whether you have or have not arrived at any conclusion, and then make your explanation afterwards.

A. I have had no occasion to form such an opinion.

By Mr. Norman:

Q. You have not done it?

A. I wouldn't say that I have none, no sir. I have common sense——

Q. No, I say, you have not done it.

A. Oh. Not specifically, no.

Q. Have you done it so that you can arrive at a conclusion?

A. I can arrive at a conclusion reasonably on the basis of these figures, yes, sir.

Q. Well now, another thing: In classifying these railroads according to common experience, did you find that [fol. 550] they did not fall into various classes with any relation at all as to whether or not they are on one side or the other of this line that separates the two territories.

A. I am very sorry, but I will have to ask you to state that question again.

Chairman Aitchison: Read it, please.

(Question read.)

A. As a layman, I find it very difficult to understand that question. I wish you would simplify it for me, if you will, please, sir.

By Mr. Norman:

Q. Well, you have indicated here that an effort was made to put these different railroads into certain classes, according, let us say, to their operating ratio. Now did you find, in doing that, that all of the railroads in the North fell in one class, and all of the railroads in the South fell in another, or did you find that they had to be intermingled, irrespective of whether they were north of the line or south of the line?

A. I found that they were intermingled.

Q. So that, when it comes to operating conditions, then, you cannot draw any such line as that, can you?

A. Any such line as what?

Q. As the boundary line between the territories?

A. Certainly you can.

Q. Upon what basis do you draw it, then?

[flo. 551] A. The basis is largely geographical, I would say.

Q. I said, Mr. Tassin, from the standopint of operating conditions, can you draw such a line?

A. From the standpoint of operating conditions?

Q. Yes.

A. From the standpoint of operating conditions, there is no occasion for drawing it.

Mr. Norman: Thank you.

Chairman Aitchison: Is there further cross examination?

Mr. Smelker: I have just one or two questions, Mr. Chairman.

By Mr. Smelker:

Q. Mr. Tassin, referring to the inside cover page of your Exhibit No. 22, I would like to ask you how you have treated the Pocahontas lines with respect to the first column, "Entire Eastern Section", and the second column, "Official Classification Territory"?

A. The Pocahontas lines are included in the first column, "Entire Eastern Section" and the Pocahontas lines are also included in the second column, "Official Classification Territory".

Q. Now, does that indicate that there is only a two per cent difference between the entire Eastern section and the Southern territory?

A. It indicates that Southern Classification territory [fol. 552] needs 3 per cent more additional gross than Official territory needs, or only 2 per cent more than the entire Eastern section needs.

Q. Now, there is just one more question, I believe, Mr. Tassin. Do those percentages include relative costs in the two territories?

A. Those percentages include the costs in both territories, yes, sir. Perhaps you might let me explain just how those percentages are arrived at, and that will explain it thoroughly. On one side I have computed gross railway operating income by adding rents collectible to railway operating revenues. On the other side I have computed the gross railway operating outgo by adding expenses, taxes and rents payable. To the sum of those I have added a 5¾ per cent return on investment in railway property used in transportation service, as reported to the Interstate Commerce Commission in Table 211-N of the annual reports, plus cash, materials and supplies. That means the full extent of revenue needs. When this figure is divided by the gross income figure, and you reach a ratio of 100, that means that the need has been met, and to the extent that you produce a ratio greater than 100, the excess over 100 indicates the percentage that your gross must be raised in order to produce a 5¾ per cent return.

[fol. 553] Q. Can those percentages be treated as indicative of relative costs?

A. Yes, sir, certainly.

Q. Now there is just one additional question, Mr. Tassin. Did you use the Commission's value or the book value?

A. I did not get that.

Q. I say, in your computations, did you use the Commission's value or the book value?

A. I did not use any value. I used book investment.

Mr. Smelker: That is all.

Chairman Aitchison: Is there any further cross examination?

Mr. Norman: If the Commission please, might I be indulged to the extent of being permitted to ask one more question?

Chairman Aitchison: Yes.

By Mr. Norman:

Q. Referring to your Exhibit No. 22 again, Mr. Tassin, statement No. 1, I want to ask you this question: First, you show there in column 4, the gross operating outgo. Then in column 5 you show 5¾ per cent return on the book value, as you have just stated——

A. No.

Chairman Aitchison: Book investment.

By Mr. Norman:

Q. —or rather, I mean to say, book investment. Then [fol. 554] in line 6—or in column 6, to arrive at the gross revenue need, you seem to add together those items, gross railway operating outgo, and the 5¾ per cent return, to get the gross revenue need.

A. Certainly, sir. Capital carrying cost is included in a statement of cost—or revenue need.

Q. And by adding together the gross railway outgo, and the 5¾ per cent return, you get the gross revenue need. That means the gross revenue need in order to pay all expenses, and a 5¾ per cent return on book investment; is that correct?

A. Yes, sir.

Mr. Norman: Thank you.

Chairman Aitchison: Is there any further cross examination? Have you anything further of Mr. Tassin, Mr. McGehee?

Mr. McGehee: Nothing.

Chairman Aitchison: You are excused.

(Witness excused.)

Mr. Gwathmey: At this time, if the Commission please, I desire to call Mr. Lewis F. Ormond. Mr. Ormand has nine exhibits, which, however, have been bound together, and can be introduced as one exhibit, if the Commission desires.

Chairman Aitchison: We will take them as one exhibit. [fol. 555] Mr. Guathmey: Very well.

Chairman Aitchison: You, of course, are familiar with the rules, Mr. Gwathmey, as to exhibits being bound together and numbered consecutively, which are for your convenience, just as well as for ours.

Mr. Gwathmey: Yes.

Chairman Aitchison: They will be received as one exhibit, and you may refer to the various sections, to avoid any renumbering.

Mr. Gwathmey: May we have the exhibit marked for identification, then, as No. 31.

(Exhibit No. 31, Witness Ormond, marked for identification.)

LEWIS F. ORMOND, was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Mr. Ormond, will you please state your full name, residence and occupation?

A. My name is Lewis F. Ormond; residence, Wilmington, North Carolina; occupation, Assistant Comptroller, Atlantic Coast Line Railroad Company.

Q. Will you please state briefly your experience in railroad accounting and statistical matters?

A. For the past five and a half years approximately I have been occupying my present position. Prior to that [fol. 556] time, for 16 years, I was connected with the Bureau of Accounts of the Interstate Commerce Commission as an examiner of accounts. Prior to that time I occupied various clerical and minor positions in the accounting department of the Santa Fe Railway at Galveston, Texas.

Q. On whose behalf are you appearing in this proceeding?

A. Solely on behalf of Atlantic Coast Line Railroad Company.

Q. To what features of the exhibits which were offered by Dr. Edwards at the St. Louis hearing will your testimony relate, directly?

A. To the use by Dr. Edwards of a ratemaking value of $207,000,000 for the Atlantic Coast Line Railroad Company.

Q. Have you prepared an exhibit, which has been marked for identification as Exhibit No. 31, consisting of 20 pages, for presentation here?

A. Yes, sir.

Q. Was that exhibit prepared by you, or under your direction and supervision?

A. In part, both.

Q. And are the facts therein set forth, true and correct, to the best of your knowledge and belief?

A. They are.

Q. Will you now proceed in your own way, please, Mr. Ormond, to explain this exhibit.

[fol. 557] A. The first ten sheets of this exhibit consist of correspondence between the officers of Atlantic Coast Line Railroad Company and the Bureau of Valuation of the Interstate Commerce Commission, primarily in connection with the Automobile Case, Docket 28190. Those documents are reproduced in this exhibit because, upon examination of Dr. Edwards supporting papers in the instant case, it was found that he had used in this case the valuation of $207,000,000 for the Atlantic Coast Line Railroad Company, which was furnished by the Bureau of Valuation primarily for use in the Automobile Case. That value, in the Automobile Case, purported to be the ratemaking value of the Atlantic Coast Line property used in the service of transportation, as of December 31, 1939. In this case it is described in Dr. Edwards' working papers as an average of the same value, taking December 31, 1939, and December 31, 1940, as the basis. I do not think that it will be necessary to refer further at this time to the first ten pages of the exhibit, but I expect to refer to them incidentally a little later on in my testimony. Sheet 11 of the exhibit I will take up next, or rather, sheets 11 and 12. The purpose of my testimony will be to compare——

Q. Just a moment, please, Mr. Ormond, until we are sure that everybody has those sheets of the exhibit. Will you just state for purposes of identification, please, what [fol. 558] the sheets to which you have just referred, relate.

A. These sheets are headed "Detailed data drawn from valuation docket No. 930 (38) Valuation Report 503, as of June 30th, 1917." This material is introduced in order to form a background for certain comparisons which I will later make between the ratemaking value found by the Commission as of June 30th, 1917, and the value produced by the Bureau of Valuation as of December 31, 1939. If you will look at the exhibit, you will see that it shows, by

primary road and equipment accounts, separately, Property Owned and Used, Property Owned but not Used, Total Owned Property, Property Used but not Owned, Total Used Property, Cost of Reproduction New, and Cost of Reproduction Less Depreciation. In the total columns, meaning by that those columns that show Total Owned Property and Total Used Property, the depreciation taken into account by the Commission, and the condition per cent developed by the Commission for each account, are shown. I think it really necessary to call attention to those condition percents by totals, that is, first, for Road Property, which is shown on Sheet 1—or rather, on sheet 11, I should say. It will be observed that for the Total Property Owned in the Road category, the condition percent, as of June 30th, 1917, was found to be 82.634, and for Total Used Property, 82,797. On sheet 12, similar [fol. 559] data are shown, first for Equipment, the condition percent of Owned Equipment having been found to be 64.935, and for all Used Equipment, 64.921. For All Property, the last line on the second page, the condition percent for Owned Property is 78.265, and for Used Property, 78.413. You will understand, of course, that Used Property comprehends Owned Property, and something in addition. Practically all of the property owned by the Atlantic Coast Line Railroad Company is also used, only a small quantity being used by others, and the property used but not owned is not of any very great importance in the case of this railroad. Therefore, when later in my testimony I limit my remarks to Property Owned and Used, it will in effect cover practically all of the property. The next sheet of the exhibit——

Q. 13?

A. Yes, sir, sheet No. 13—or rather, it should be numbered 13—is in effect a summary of the previous two sheets, with something added. It separates the property under the same captions as in the previous statement, and summarizes it by Road, Equipment and General Expenditures, and adds in the value of Land and Rights, as found by the Commission as of June 30th, 1917. This figure of $23,775,032, for Property Owned and Used, and the corresponding figure or the other classifications of property, is added in both of the next columns, to the left of the [fol. 560] depreciation column, for the obvious reason that

land does not ordinarily depreciate. By this calculation there is produced a total value on the basis of the figures of the Bureau of Valuation. In order to make sure that you have the right line, let me say that the first money column shows the amount of $186,309,927. Next I have shown the final value found by the Commission, excluding working capital, which was separately reported in the Valuation Docket, and may easily be excluded from the final value. That figure, for Owned and Used Property, is $157,600,000. Here I make certain comparisons. The final value, less working capital for Owned and Used Property, was 84.59 per cent of the total value new, also found by the Commission at 104.30 per cent of the total value less depreciation. I have shown what the percentages are, across the page, and they are very close. Note also that for Total Owned Property, the percentages are respectively 84.53 per cent and 104.29 per cent; and for Total Used Property, 84.71 per cent and 104.26 per cent; very close, you will observe, in each case. Next on the statement, under the Total Owned column, I have shown the ledger value, book investment in road and equipment, from which I have deducted the adjustments which the Bureau of Valuation said, in the Final Valuation Report—or rather, which the Commission said, should be eliminated [fol. 561] from book investment. This is done without admitting at all those adjustments should be made, but merely for clarity of purpose. As to these eliminations, the adjusted book investment as of June 30th, 1917, appears as $160,438,638; and following down the column, it will be found that the adjusted book value was 85.36 per cent of the reproduction cost new of the property, as found by the Commission; was 105.31 per cent of the reproduction cost less depreciation, plus land; and was 100.98 per cent of the final value found by the Commission. This is mentioned, and I would like to give it some emphasis, because it illustrates a condition where the final value found by the Commission, was matched by the book value of the property of the company, as is shown by its records, less the adjustments which the Commission claimed should be made. In the last column I have shown the working capital allowed by the Commission as of June 30th, 1917, $4,550,000, and in contrast with that, I show below that as of that same date, the company had on hand cash amounting to $19,521,000-odd.

By Chairman Aitchison:

Q. How much of that was used for the payment of interest due on July 1st?

A. I cannot answer that question, Mr. Chairman, out of my head. Our interest runs now a little better than $6,000,000 per year. I think it was somewhere in that neighborhood, perhaps, or slightly less, then. Material and [fol. 562] Supplies on Hand were $4,409,819, so that it can be seen that the working capital allowed by the Commission was only slightly greater than the material and supplies on hand.

Q. Do you happen to recall whether or not that was one of the issues that was fought out in the valuation proceeding?

A. It was, yes, Mr. Chairman, and you increased our working capital slightly, as the result of our protest. I mention this, not to raise any argument as regards the June 30th, 1917, figure, but merely to provide a basis for comparing these figures with the situation as of December 31, 1939,—and I will be through with this background very shortly. Just for collateral consideration, it is also shown that the average monthly revenues of the company in the year 1917 amounted to $3,671,000, roughly, the average monthly operating expenses were $2,481,000, and the average accrual for taxes, $188,000 monthly. Now I want to quote very briefly, before leaving this basic valuation, from the remarks of the Commission in the final report——

By Mr. Gwathmey:

Q. Give the docket, please.

A. Valuation Docket No. 930—I have already referred to the volume and page. "We have given careful consideration to all of the facts of record pertaining to the [fol. 563] value of the Coast Line as an economically-developed, well-maintained and seasoned property, in operation as a going concern." Shown in the statement that I have just explained, that careful consideration resulted in the conclusion that all road property owned by the Coast Line had a condition percent of 82, roughly; all road property used, approximately the same per cent; and the other conclusions that I have read to you. I might mention that the Coast Line protested the primary

valuation of its property, both generally and specifically, and although those protests were to a considerable extent overruled by the Commission, so far as the railroad is concerned, they still stand. Turn next, if you will, to sheets 14 and 15 of the exhibit.

Chairman Aitchison: You had better read the headings to identify them.

A. They are headed "Changes in Property Owned and Used—July 1, 1917, to December 31, 1939." This statement starts off with Cost of Reproduction New as of June 30th, 1917, merely having brought that figure forward from the previous statement, and except for that figure, the other amounts and totals shown on these sheets are a departure from those previously used, in that they are represented by reports made to the Commission by the carrier under Valuation Order No. 3, on Form BB-588, [fol. 564] which have been checked by the Commission, and incidentally are in accordance with the amounts entered in the Property Accounts on the books of the Company. Therefore there is no disagreement, whatever may have been the case prior to June 30th, 1917, in regard to those subsequent figures. The next column is headed Retirements, from July 1, 1917, to December 31, 1939, and it covers the retirements that have been made in the balance of the year from the property which existed at June 30th, 1917. The next column shows the residue of that property. The next three columns relate to Additions and Betterments made in the interim, first showing gross additions, then the retirements made from those additions, and finally, the net additions. The last column is the sum of the column headed Net Additions, and the column headed Residue of Inventoried Property. It is a figure which is currently being used by the Commission, and referred to as Estimated Original Cost, on the theory that the valuation of June 30th, 1917, at prices from 1910 to 1914, represents about as good an estimate of original cost of the property then in existence, as is available. Of course the actual original cost of the property is not determined. Now dealing with the first sheet here, sheet 14, some interesting comparisons are available as regards road property. Taking the road property existing at [fol. 565] June 30th, 1917, as 100 per cent, it is found

that 23.46 per cent of that property has been retired, leaving 76.54 per cent still in existence; and for the additions made since June 30th, 1917, 94.5 per cent remained in existence December 31, 1939. That produces a situation where the property existing at December 31, 1939, existed to the extent of 48.42 per cent of the property that was on hand at June 30th, 1917, and 51.58 per cent of the property which has been added since 1917. I shall not take time to read the other comparisons on the next sheet, Sheet 15, except the total for the whole property. It may be seen that at December 31, 1939, only 65.72 per cent of the inventoried plant remained in existence, and also, in the last line, that the plant existing at December 31, 1939, existed to the extent of 41.55 per cent of the property which had been inventoried at June 30th, 1917, and 58.45 per cent of the property which had been added since the date of the inventory. In other words, 58 per cent of the property which existed as of the last date, had been created by capital expenditures since the date of the valuation. Now having brought my statement down to December 31, 1939, on sheet 16 of the exhibit, I have attempted to make some application of the data thus available. This sheet is headed "Application of Data Furnished with Bureau of Valuation Letter of November 8, 1941." The letter of [fol. 566] November 8, 1941, is reproduced at sheet 9 of the exhibit, and sheet 10 of the exhibit is the data which on sheet 16 I attempt to apply. That was furnished by the Bureau of Valuation at the request of our company. This request was made in connection with the Automobile Case, in order to determine exactly what the value of $207,000,000 consisted of; and the data represents the elements of value—I believe that is the term that the Commission uses—which were considered by the Bureau of Valuation in arriving at that value. I had better interpolate right here, Mr. Chairman, that in furnishing that value, Director Lewis of the Bureau of Valuation, emphasized the fact that it had not been submitted to, or approved by, the Commission. I do not know whether it has ever been so submitted, or approved.

Chairman Aitchison: I think not,—if the answer is of any importance in the record. Of course you will recall, Mr. Ormond, that valuation figures were submitted early this year, in a formal proceeding before the Commission,

Ex Parte 148; and if my recollection serves me correctly, it was stipulated of record that Director Lewis would testify before the Commission thereto, if he were called. It was so stipulated to avoid bringing him out to St. Louis.

The Witness: Well, I did not have any part in Ex Parte [fol. 567] 148, Mr. Chairman.

Mr. Gwathmey: If your Honor will permit me to say so, I think you will recall that there was a very definite reservation made on that record, on behalf of the railroads, at that time.

Chairman Aitchison: I believe that is correct. I am simply directing your attention to the situation with respect to those figures.

The Witness: May I proceed?

Chairman Aitchison: Yes.

The Witness: Now, the elements of value thus furnished by the Bureau of Valuation were the original cost, and cost of reproduction, both new and less depreciation; the value of land and rights; and working capital,—all substantial elements of value, which were considered in 1917, although different in amount, of course; so I have taken those elements of value, bearing in mind that we had no separation between road and equipment, and that the present elements of value relate only to property used; and on this sheet 16 I have worked them out so as to produce the depreciation taken into consideration, and the condition percents.

By Mr. Gwathmey:

Q. Before you proceed further with your discussion of sheet 16, Mr. Ormond, we possibly should fill in the blanks appearing on that page of the exhibit, where there are [fol. 568] references to previous sheets of the exhibit.

A. Down there in the line where the second money column begins, the figure being $257,101,272, the reference there should be to sheet 15, instead of the present blank.

By Chairman Aitchison:

Q. And the same immediately below.

A. Yes, sir.

By Mr. Gwathmey:

Q. The same reference.

A. Yes.

By Chairman Aitchison:

Q. Original cost, based on cost of reproduction new, 1910-1914 prices, as of 1917, plus actual additions and betterments; is that correct?

A. Right. That is what the Bureau of Valuation has been terming it, in recent years, for the reasons that I gave previously, and I do not think that anybody has objected to it.

Q. Dr. Lorenz used to say that it would not vary 5 per cent.

A. No, 1910-1914 seemed to average up pretty well, on all costs. Now the first calculation shown here has been to take the cost of reproduction as of December 31, 1939, new, and deduct from it the cost of reproduction less depreciation. This is property owned and used. That indicates that the Bureau of Valuation took into consideration as of December 31, 1939, on further returns, depreciation to the extent of $108,904,227, and produced by that means [fol. 569] a condition per cent of 62.812. The condition per cent of course represents the figure determined by dividing the reproduction cost less depreciation, by the reproduction cost new. The same calculation is made below for property used but not owned, and for total property used. The total there taken into account is developed to have been $111,835,410, and the condition per cent, 63.129. Now right here I want to make a statement, with regard to this situation. From my knowledge of the property of the Atlantic Coast Line Railroad Company, as it existed in 1939, together with my experience in handling and supervising the handling of expenditures made on that property, and from studies of its past history, I make the statement, that that condition per cent of 63.129 is not correct, and cannot be justified. The next, or lower section of the exhibit, simply applies to the original cost figure the same series of calculations, and at the bottom, it will be observed that the original cost, amounting to $267,000,000 of the property has depreciated, according to the calculations of the Commission, to the extent of $98,384,878. I had better explain briefly right here the discrepancy between the original cost here used, for property used, amounting to $267,000,000, which I just read, and the figure shown on sheet 10 of the exhibit, furnished by the Commission, that latter figure being $261,000,000, or a discrepancy

[fol. 570] of some $5,000,000, or $6,000,000. That came about from a number of reasons. When the Commission worked up its figure, it did not have the 588 return for the year 1939, and used the figures shown in the annual report, which were different. Another reason is that the Commission, in handling the 588 reports, in producing original cost, as I understand it, retires from Engineering and from General Expenditures, proportionately, in accordance with percentages allowed in the valuation, whereas the carrier does not. We make no retirements from those figures. That also would cause the Commission's figure to be considerably lower. Another reason, which I developed by investigation in the office of the Bureau of Valuation, is that in getting up these figures, there was some slight discrepancy, which later was corrected, which tended to lower the Commission's figure. We are in no particular disagreement about this, and the amount involved would not have any material effect, in any event. Now this statement shows that the condition per cent of property used has declined 15 points in 22½ years, and that the property has accumulated additional depreciation to the tune of $76,000,000, roughly, between 1917 and 1939, despite the fact that inventoried property to the extent of over $63,000,000 has been retired in that interval, which normally would cancel the depreciation on that much of the [fol. 571] old property; and also despite the fact that the company has expended $158,000,000 in adding property to the plan. As regards the original cost section of the statement, if we compare that figure with the reproduction cost new, as of June 30th, 1917, which is the basis of the original cost down to that point, we find that the original cost of the property has increased only $39,000,000 in 22½ years, again despite the expenditure of $158,000,000 on the property. Next, let us turn to sheet 17 of the exhibit.

By Mr. Gwathmey:

Q. Read the heading, please.

A. Yes, sir; I am just going to do that. This statement is headed "Summary of Valuation Data Furnished with Bureau of Valuation Letter November 8, 1941, and Comparisons based thereon." Roughly, this is an attempt to reproduce, as of December 31, 1939, the same comparisons

that have been previously given as of June 30th, 1917. It is limited, of course, because we do not have a separation between road and equipment, and general expenditures, and also because the only class of property on which we have full data, is total property used. As I have previously explained, the property owned and used predominate. Here again we have added the amount allowed for value of land and rights to the cost of reproduction, road, equipment and general expenditures, and we have [fol. 572] produced a total value, according to the Bureau of Valuation figures, separately, for owned and used, used but not owned, and total used; and I have also set in, in the last two columns, midway, the final value fixed by the Bureau of Valuation as of December 31, 1939, after having deducted the amount allowed for working capital. That figure is $203,457,200. Now then, we get to the real gist of my testimony. It appears that the final value, less working capital, is 62.76 per cent of the reproduction value new, and 95.81 per cent of reproduction less depreciation. As of June 30th, 1917, the corresponding figures were 84.71, and 104.26. Now this percentage of 95.81 is particularly significant. I have already commented on the low condition percentage of December 31, 1939, obviously the result of continued deductions for depreciation. But I do not see why this percentage of 95.81 is as low as it is. If the value fixed by the Commission December 31, 1917, was 104.26 per cent of the cost of reproduction less depreciation, why should it be 95.81 per cent at December 31, 1939, taking the same factors into consideration? The only explanation, and one upon which I shall comment briefly later, is the land and rights, or the amount allowed for land and rights; but even taking that into consideration, it seems peculiar that the percentage that I have remarked on should be so low. Now let us take the next comparison, [fol. 573] —which I will freely admit is not of a great deal of value. I have set in the ledger value shown by our books for land, road and equipment, of $266,421,850. From that I have developed the same adjustment that was suggested by the Bureau of Valuation at June 30th, 1917, and I have also deducted $1,000,000 flat to represent the figure included there in that total of property owned but not used. We do not know exactly what that is, but that is an approximation of it. The changes in property owned but not used

are reported by the using carrier, so as a matter of fact we do not have a very clear idea as to what that is, but $1,000,000 is a fair estimate. That calculation develops that the ledger value of our property is 77.84 per cent of the reproduction value new, and 119 per cent of reproduction less depreciation. In 1939 those percentages were materially different, and very materially different. The next figure shown in this statement is the amount allowed for working capital, in the last column, $3,542,800. Let me recall the fact that $4,550,000 was allowed in 1917 for working capital, well over $1,000,000 different, lower, in 1939. In the meantime, the Atlantic Coast Line Railroad Company's operated property had grown from some 4700 miles to some 5100 miles; it was a larger property, doing a larger business, but it has an allowance of a smaller amount, as it stands here, of about 25 per cent for working [fol. 574] capital. The ledger figure for cash on hand at the same date is shown to have been $7,500,000, and for materials and supplies $3,800,000; so here we have a situation where the working capital is actually less than the materials and supplies on hand. In the year 1939 the average monthly revenues had grown to $3,900,000, and the average monthly operating expenses to $3,055,000. There is an important difference, however. While both revenues and expenses had grown, the net difference between them, which is what would produce increments to working capital, had shrunk very materially. I understand that working capital is developed by the Commission in accordance with a formula, but I do not know what that formula is. I am not going to say anything more about it, except that I would be very curious to see a formula that could produce results such as I have given.

Chairman Aitchison: I thought that was pretty well threshed out in some of the previous cases.

The Witness: Yes, it was, of course, but I just cannot understand how it can be applied, and produce results like these. Now, following up this testimony as to the comparisons at these two different dates, I want to give you some other comparisons, right briefly. Sheet 18 of the exhibit, headed "Some characteristics of railroad plant compared—1917 versus 1939," shows the difference [fol. 575] in operated road milage, upon which I have previously commented, and shows that miles of second main

tracks had increased from 331 to 689; miles of all track operated had increased from 6100 to 7300; miles of road protected by automatic block signals had increased from 327 to 839; and miles of track protected by automatic train control, had increased from none to 580. It also shows that the predominant weight per yard of rails in main line track, had increased from 85 pounds to 100 pounds; that the ballast had been changed from pit run gravel to crushed rock and slag; that the maximum permitted speed of freight trains had been increased from 40 miles per hour to 50 miles per hour, and of passenger trains, from 60 to 80 miles per hour; that locomotives in service had decreased, but their aggregate tractive effort had substantially increased; and that freight cars in service had also decreased, but had increased, considering the available Fruit Growers Express cars, which are used to move a large proportion of the traffic handled by our company. Turn now, please, to sheet 19 of the exhibit, headed "Some indices of railroad performance compared—1917, 1939, 1942." I might explain here that it was necessary to go forward to 1942 to determine what this railroad plant might be capable of doing. 1917 was the best year, in point of volume, that the Atlantic Coast Line Railroad had ever known up to [fol. 576] that time, and in contrast with that, 1939 was rather a poor year; but, as we all know, 1942 probably will top all of the years for most of the railroads. I have produced 1942 figures in rather a rough way, admittedly, by simply multiplying the figures for half of the year, by 2. I think that will set it at a minimum, as conditions now appear. I do not see any point in reading all of these figures into the record. You can see that in 1942 this railroad plant, which the Bureau of Valuation says is in a 63 per cent condition, is handling anywhere from 2 to 3 times as much traffic as it handled in 1917, when it was reported as being in an 84 per cent condition. Almost every index—and they are not selected particularly, because they show favorable results—you will find double or trebled. I do not think it necessary to emphasize it any further.

Mr. Bee: Mr. Ormond, should that dollar mark be there, beside revenue tons carried, on sheet 19?

The Witness: How is that again?

Mr. Bee: I say, you have a dollar sign there, beside revenue tons carried, on that last sheet. Should that be there?

The Witness: No. Will you make that correction, please. Just strike out the dollar mark that is shown at the top of each of these columns. Now let us refer to the [fol. 577] last page——

[fol. 577] By Chairman Aitchison:

Q. Just a moment. Are you going to read into the record the excerpt from one of our decisions? You have referred to it.

A. Read it into the record?

Q. Yes. You have it here.

A. No, sir, I was not going to read into the record. I was just going to refer to it. Sheet 20 is headed "Excerpt from I. C. C. Valuation Docket No. 930-38 Valuation Reports 552-553." I would merely like to call attention to the statement at the bottom of the second paragraph, as follows: "There is nothing in that case that disapproves, directly or by implication, the methods used by us, since they are not the result merely of a straight line calculation. The depreciation reported by us in this case was estimated after an inspection of the property and a consideration of mortality statistics of similar property, in similar use." That was made in response to a protest of the Atlantic Coast Line Railroad, to the effect that the Commission had used straight line depreciation in determining the depreciation existing as of June 30th, 1917. The Commission says that it did not use straight-line depreciation solely.

[fol. 578] The Witness: Now, let me refer to sheet 3 of the exhibit. This is a letter written by the Director of the Bureau of Valuation. I just want to call attention to the last paragraph in which he says that our query as to the low value—or rather, our query as to the low value accorded to the Coast Line brought forth this letter, in the last paragraph of which he says: "It seems rather obvious that in the marshalling of the above standard elements of value, that the differences in thought center in depreciation." Now then, if you will look at sheet 6, sheet 6 is sheet 3 of a Statement of Methods which was furnished by the Bureau of Valuation along with the elements of value as of December 31, 1939. It refers specifically to the Automobile Case and also this case, evidently having been worked out or reproduced, at least for

the dual purpose of the two cases. Under the heading "Cost of Reproduction Less Depreciation," the very first line says: "Depreciation has been determined on a straight line basis in accordance with the establishesd practice of the Commission." In Valuation Docket 930 as of June 30, 1917, the Commission says that the straight line basis was not used altogether or without modification. Now, getting back to June 30, 1917, neither I nor anyone else outside of the Commission or the Bureau of Valuation knows exactly how the depreciation that was there taken [fol. 579] into account was computed.

Chairman Aitchison: Will you read that last statement, please, Mr. Reporter.

(Record read.)

The Witness: We know that——

By Chairman Aitchison:

Q. You had a pretty good analysis of methods, did you not?

A. We know the amounts of it, Mr. Chairman.

Q. The methods too. They are all stated in the Analysis of Methods given the parties and referred to in the Texas Midland Valuation Case.

A. I was just about to refer to that.

Q. You had the valuation engineers on the stand?

A. Yes, sir.

Q. Did not the Commission's valuation engineers prepare and submit that information to your company, and were they not given an opportunity to check it?

A. Yes.

Q. Even before the tentative valuations were put out?

A. Yes, and they were protested, but I do not believe, Mr. Chairman, that those condition percents that were there developed were the sole basis for depreciation in the Texas Midland Memorandum that was issued along with that case.

Q. Bulletin 226?

[fol. 580] A. How is that?

Q. Bulletin 226?

A. I think that was it.

Q. It was an engineering report and memorandum 226.

A. They said that straight line depreciation would be used where practicable.

Q. Is it not fair to assume that they had something of that sort in mind on page 3?

A. I think that is possible, but my thought about this thing has centered around this: On a property as old as the Atlantic Coast Line which was unquestionably, to a large extent, anywhere from 40 to 70 years old as of the date of valuation, the straight line method of depreciation must have reached the limits of practicability very soon. Otherwise we could have never emerged with a condition per cent of 84 per cent. My understanding is, and I state it with temerity, of the Bureau of Valuation's procedure, that their engineers accompanied by ours, went out and inspected each and every unit of property. In fact, they drew a picture of it. They developed a condition per cent based on that physical inspection. Those data went into Washington and were passed upon by the Board of Review, and the final condition percent by accounts and in some cases by elements was developed by taking the straight line method and the condition per cent and [fol. 581] using judgment. That is exactly the point I want to make. In 1917 judgment was exercised in fixing the depreciation existing on the property of the Atlantic Coast Line. We do not think it was in 1939.

Q. Because there was no physical inspection made? Is that your point?

A. That is the point, Mr. Chairman. There was an inspection made in December, 1940. I think three gentlemen, very capable men, spent 12 or 13 days going over 5,000 miles of the Atlantic Coast Line, to a considerable extent from the rear end of a passenger train.

Q. That is very similar to the testimony that was given by Mr. John F. Stevens with respect to the valuation of the Northern Pacific in the Spokane Fourth Section case. He stood on a train that went over the line and testified with respect to its value.

A. I am not familiar with that, sir. My point is this: In 1917, I think depreciation was what might be termed an end-product. It represented the difference between a reproduction cost less depreciation developed by physical inspection plus judgment, and a reproduction cost new. In 1939 there has been no such inspection made that was adequate to develop conditions.

Q. I think I can state your point. Let me see if I understand it correctly. Your point is that the Atlantic Coast

[fol. 582] Line, being what it is, being made up of different kinds of property, incurs depreciation which has to be taken off by certain methods; that there comes, with respect to each of these classes of property, a time when a certain figure is reached and thereafter, if the property is reasonably well maintained, that particular figure becomes static as to each class. Of course, that would enter into the composite. Your contention as I understand it is that the method which you say Director Lewis said was used, would carry that process of depreciation down below that static position of normal maintenance?

A. That is one angle of it. However, as you know, the Bureau of Valuation on some classes of property, according to my understanding does not carry depreciation down below a certain level which they think would be normal. But that is not the only point. My point is that you cannot figure depreciation with a pencil and paper, when that depreciation is going to affect a ratemaking value which is of paramount importance to the railroad involved. As a matter of fact, I do not want to go into a dissertation on depreciation, but my sole point in pointing out these comparisons as of December 31, 1939, and 1917 is merely this: The Commission cannot have made an adequate inspection, and in computing that depreciation, the property of the Atlantic Coast Line has been depreciated far [fol. 583] below what an adequate inspection would reveal.

Q. Now, is it not a matter of degree, the extent to which you differ with respect to the results obtained by Director Lewis? Assuming there had been perfectly adequate inspection and perfectly adequate methods, satisfactory to you, that had been employed up to 1917, as of 1918 you would be able to take the additions and betterments, the increments to the plant, and so on and so forth, and you would be able, without physical inspection, to arrive at a reasonably satisfactory condition per cent of the property, would you not, with your pencil and paper?

A. With a lapse of only one year, and for any purpose except valuation, I should say yes. But not for 22½ years and for a purpose that is vital to us, fixing a ratemaking value.

Q. Well, you would not expect an engineer to go out and look at a piece of property that was brand new, would you?

A. No, sir. Not if it was brand new, no, sir.

Q. All right. You would not expect him to go out and look at a piece of property that had been retired, would you?

A. No, but it gets down to this: If you have a piece of property that is not brand new and has not been retired, I do not believe—this is my personal opinion—that anybody can say that property, railroad property, is going to depreciate at so much a year from that time on. It leads [fol. 584] you into a ridiculous situation. You will not have any property left at all.

Q. Well, speaking of ridiculous situations, do you not also get into a ridiculous situation under your contention, where you would have a man go out and look at and make an inspection of brand new property, although the cost of reproduction obviously would be exactly the same as the original cost?

A. I just do not see it that way, Mr. Chairman. I expect we are looking at it from different angles.

Q. What in the world would you do? He would look at it and he would say, "This is a brand new piece of property, 100 per cent." He could tell that, could he not?

A. Well, he could not tell with respect to an individual structure that was 50 years old, that was 27 years old as of the date of valuation, where it is entirely conceivable that that individual structure might have a higher condition percent in 1939 than it has in 1917.

Q. Your maintenance accounts show the maintenance work that is done. They show whether there were any additions, betterments, or maintenance put out.

A. Not by structures, sir.

Q. By class of structures.

A. This business of charging off a certain amount in accordance with the straight line theory of depreciation, [fol. 585] year by year, and arriving at a value on the basis thereof—I can never agree to it. As I said before, this question is of vital importance. If rates are to be based and costs are to computed on ratemaking values, thus determined, if we all live long enough, we will soon come to the point where there may not be any ratemaking value. That is particularly true for this reason: In the last two decades the railroad plant has been expanding, at least to some extent. By capital additions the impact of depreciation has been offset, and more than offset. We all know that the railroads are now in a position where their

plants are going to not expand, but they are probably going to contract. There will only be the renewal of facilities, and not these heavy capital additions. As long as the straight line theory of depreciation is applied without the judgment factor developed by physical inspection, admitting the impracticability of doing it, your value is going down, down, down, down. It is a ratemaking value, and it is a value on which the railroads have every right to expect adequate consideration.

Q. You have not discussed at all the rate of return, have you?

A. No, sir.

Chairman Aitchison: Proceed.

By Mr. Gwathmey:

Q. Mr. Ormond, will you turn for a moment on sheet 16. [fol. 586] A. Yes.

Q. Apparently this was mimeographed twice, because in some copies the first figure on the sheet is $292,848,883, and in other copies the first figure appears as $282,848,883.

A. Just a minute.

Q. Which is right?

A. $292,000,000 is right.

Mr. Gwathmey: Mr. Chairman, we ask that the exhibit which has been referred to and identified by the witness be received in evidence.

Chairman Aitchison: Is there any objection to the receipt in evidence of Exhibit 31? (No response.) It is received.

(Exhibit No. 31, Witness Ormond, received in evidence.)

Mr. Gwathmey: The witness is tendered for cross-examination.

Chairman Aitchison: Is there any cross-examination?

Mr. Smelker: I have one or two questions.

Chairman Aitchison: Mr. Smelker.

Cross-examination.

By Mr. Smelker:

Q. Has your company made an engineering study of the present condition percent of the property as of December 31, 1939?

[fol. 587] A. No, sir.

Q. Then you have no alternative offer to make as far as ratemaking value is concerned?

A. I did not get the question.

Mr. Smelker: Read the question, please, Mr. Reporter.

(Question read.)

A. No, sir, except to state that the ratemaking value furnished by the Bureau of Valuation is much too low.

Mr. Smelker: That is all.

By Chairman Aitchison:

Q. You indicated that there was a sort of cut-off or stabilization point on these various classifications of property beyond which you might not expect the property to depreciate, if you got down, conceivably, to the percentage of the reproduction new and the property was reasonably well maintained and stayed there. Can you indicate what those percentages would be according to the several classes of property as stated by Director Lewis in his letter?

A. No, sir, I could not; I could not indicate any such percentages.

Chairman Aitchison: I see.

The Witness: If I might say so, I think you misinterpreted slightly what I said. I did not make the statement that they—I believe the Bureau of Valuation uses certain of those figures. My position [fol. 588] is that depreciation can only be determined by inspection.

Q. Suppose it is determined by inspection. If the property is reasonably well maintained, would the inspector ever find below a given percentage?

A. Below a certain percentage?

Q. Yes, below a given percentage.

A. I doubt it. I do not think he would.

Q. So there is a cut-off point on a well maintained plant for each class of property?

A. I grant that there must be, and that might be an alternative.

Q. Take ties, for instance, where they are adequately maintained and they have gotten into a cycle and the cycle

is not disturbed: You would not expect any more than 50 per cent, would you?

A. Ordinarily it is 50 per cent.

Q. The same would apply with respect to the other classes of property?

A. We could only apply in that sense to a class of property which consisted of a very great many ties that were being renewed constantly and regularly, so to speak. Ties are the best example of it.

Chairman Aitchison: Is there any further cross examination of this witness? (No response.) You are excused, Mr. Ormond.

(Witness excused.)

[fol. 589] Chairman Aitchison: Call your next witness, Mr. Gwathmey.

Mr. Gwathmey: Your Honor, I would like to call Mr. R. E. Boyle, Jr.

Chairman Aitchison: Proceed.

R. E. Boyle, Jr., was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Mr. Boyle, will you please state your name, residence and occupation.

A. My name is R. E. Boyle, Jr., Atlanta, Georgia. I am assistant to the Chairman of the Southern Freight Association.

Q. Please state briefly your experience in respect to rate and classification matters.

A. For more than 21 years I held various positions in the Traffic Department of the Southern Railway System, including those of rate clerk, executive rate clerk, chief clerk, commerce agent, assistant general freight agent, and general freight agent. For two and a half years, beginning January 1, 1940, I was a member of the Southern Classification Commitee. Presently I am assistant to the Chairman of the Southern Freight Association. During all of this period of railroad service, I have been engaged wholly

in traffic work, almost entirely with rate adjustment and [fol. 590] classification.

Q. With what particular portion of the testimony offered at the St. Louis hearing will you undertake to deal?

A. My testimony here will deal primarily with the classification features of Exhibit 7 in this proceeding and to a smaller degree with some of the suggestions as set out in Chapters 10, 11, 13, 14 and 15 of Exhibit No. 7.

Q. Exhibit No. 7 being an exhibit which was offered by Mr. Jensen?

A. True.

Q. Have you prepared a total of six exhibits which you desire to offer in connection with your testimony?

A. Yes, I have.

Q. Have you also prepared a narrative statement in explanation of these exhibits and of your testimony?

A. That is true.

Mr. Gwathmey: If your Honor please, I ask that these exhibits be marked for identification.

Chairman Aitchison: They may be marked for identification as Exhibits 32 to 37, both inclusive.

(Exhibits 32 to 37, Witness Boyle, marked for identification.)

By Mr. Gwathmey:

Q. Please proceed with the presentation of your prepared testimony, Mr. Boyle.

A. The entire scheme of class rates set forth in Mr. [fol. 591] Jensen's Exhibit No. 7 is predicated on a reclassification so as to preserve existing revenues. All class rates being substantially reduced, he proposes a corresponding increase in classification. The exhibit states that the term "classification" is intended to include not only the classification proper but more particularly all classification exceptions, all mileage scales and, in fact, all rates made on a mileage basis. At pages 81 and 82 of Exhibit 7 it is suggested that since a revision of class rates such as proposed would necessitate extensive classification readjustments, the rates should be published, letting a new classification be fitted into the new class rate adjustment in an orderly way through existing ma-

chinery, cancellation of the present rates to occur only when the classification has been completely revised.

Witness Jensen makes it clear that he does not advocate anywhere a reduction of the revenue of the carriers, rather, he has stressed that reductions in the class rates should be compensated by increases in classification sufficient to preserve revenues. We will undertake to show by appropriate exhibits that if preservation of revenues be the sole object, or even if it be only the prime object to be accomplished in fitting a new classification in the proposed system of class rates, a great many undesirable conditions will result. In the first place it will bring [fol. 592] about complete reversal of the basic principles of classification making. Such important elements of classification as bulk, weight, value, volume, risk of carriage, competitive articles, type of container, care required in handling, floor loading, risk of damage to other freight, etc., would of necessity have to be ignored. The distance which freight has moved in the past will be the sole factor in determining its classification if the preservation of revenues is to be accomplished. Such a classification could be made only after extensive, very costly and interminable revenue tests to determine that percentage of the revised first class rates necessary to preserve revenue, and there is no assurance that revenue could be preserved because a classification designed solely to preserve revenue would set up so many serious disruptions in relationship as to almost certainly result in a considerable change in the flow of traffic. Such a classification will destroy any semblance of classification uniformity. Competing articles, and articles which now are and ought to be rated the same, will be rated differently. The classification relationship among articles will be vastly changed. Such a classification would compound the difficulties of the long haul shipper. The proposed rate scales for the longer distances are relatively higher than for the shorter dis- [fol. 593] tances as compared with present class rates. In addition to the rate scale proposed, the suggested classification would add to the burdens of the long haul shipper because the shortest distance which a commodity moves will tend to inflate the classification rating necessary to preserve revenue. The shorter the average haul, the higher the classification will become, and thus the

higher the rate to be paid for the longer hauls. A situation of this sort would, among other things, extend the radius or distance of profitable motor truck operation. Witness Jensen expressly stated that in forming his suggested scales the element of highway competition influenced his decision to propose relatively low rates for the short hauls and relatively high rates for long hauls, but if the average hauls be anywhere near the estimate made by Mr. Jensen, that is, 270 miles for class rate and 190 miles for commodity rate traffic, the classification ratings necessary to preserve revenues at these average distances would result in an inflated classification for the longer hauls. The result, apparently, will be preservation of revenues for the relatively short hauls, certainly for hauls under 500 miles, and an increase for the longer hauls. So far as motor truck operation be concerned, the result will be no great change for the relatively short distances but an opportunity for more profitable operation for longer [fol. 594] distances. From — standpoint of the rail lines this is undesirable because it is bound to extend the radius of private truck operation to say nothing of contract and common carrier trucks.

A classification of the kind proposed will not diminish, rather will add greatly to the problem of interterritorial rates. For example, rates from Southern to Official territory where now on substantially the destination level, such as the rates prescribed in I. C. C. Docket No. 27746, will, if revenue be preserved, become actually lower than rates on the same commodities for the same distances within Official territory. Such a situation probably would not be permitted, in which event if such competitive rates from the South to Official territory are continued on the destination level, the rates will be increased, and not only will the rates be increased, but more important the result will be to very substantially increase the present spread of the rates from Southern origins over the rates from competing origins in Official territory. At page 83 of Exhibit 7 it is stated that it will be necessary as at present to compensate the excessive difference in the level of class scales by lower ratings in Southern than in Official Classification. Just the reverse of this statement will result from reclassification designed to preserve revenue. By reason of the much greater reductions proposed in the

Southern classification rate scale than proposed in the [fol. 595] Official scale, it follows that to preserve revenue the classification in the South must be increased a greater amount than in the North. Wherever the ratings presently are anywhere near uniform, the Southern rating will be substantially higher than the Official rating.

At page 84 it is suggested that the Official classification should govern the rates within the Northern zone of Southern territory. The Official rating will be determined by whatever percentage of first class may be necessary to preserve existing revenues in C. F. A. and Trunk Line territories. The Official ratings will be lower than within the South, thus within the proposed Northern zone of Southern territory, from border points, and from all origins in Official territory to the Northern zone of Southern territory the classification as well as the rates will be lower than from competing origins in the South such as Atlanta, Birmingham, Jacksonville, New Orleans, etc., which will have not only a higher rate scale but a higher classification as well. It is reasonable to expect that in making the Official classification, the Official lines will determine the ratings necessary to preserve revenue on the tremendous movement of class rate traffic in what is now Official territory, with little or no regard for the preservation of revenue on the very much smaller, yet exceedingly im- [fol. 596] portant, movement of class rate traffic in that part of the South in proposed Zone 1. The result of applying the lower Official rating to the greatly reduced class rates within, from and to Zone 1 will have adverse effect on revenues aside from setting up difficulties for competing shippers in the Southern zone of Southern territory.

In support of the testimony I have given, I desire to present certain exhibits. The first is a statement of 3 pages, marked for identification as Exhibit 32. This exhibit sets forth the several proposed first class rate scales within the various zones of Southern and Official territories, computed on the formulas stated at page 80 of Mr. Jensen's Exhibit 4. For comparison the present Southern and Official first class scales are shown.

Next is a statement of 9 pages marked for identification as Exhibit 33. In this exhibit, and in others to follow, for the purpose of demonstration only, free use has been made of assumed tons and assumed distances. It has been impossible under present conditions to assemble actual revenue and

tonnage. If actual movements of traffic had been used instead of assumed movements, the figures would be different and perhaps substantially different, but there would be no change in the resulting conditions. The purpose of this Exhibit 33 is to demonstrate three very undesirable [fol. 597] results: First, that under the proposed plan of reclassification, the distance which it moves and nothing else, will determine the classification of an article, and that a slight change in average distance will give a different classification; second, that articles which now are and under all accepted classification principles, should be rated the same, will be rated differently; and, third, whatever be the classification, the short haul shipper will pay much less than at present, and the long haul shipper will pay substantially more. On traffic presently moving within Southern territory on 3rd class rates, evenly distributed for all distances up to 1,000 miles, 3rd class will become 91% of the proposed first class rates in order to preserve revenue; but if a preponderance of the movement be for distances not exceeding 400 miles; it will require 103% of the proposed first class; and if a preponderance of the movement be for distances in excess of 500 miles, 3rd class will become only 86% of the proposed first class rates. Not all articles rated or classified the same move for the same distances, therefore, since the distances which a commodity moves will largely, if not entirely, determine its rating, classification as such will entirely disappear. Freight classification denotes an orderly and systematic distribution, arrangement, or grouping of commodities.

[fol. 598] Nothing of that sort is possible under the suggested method. Admittedly these difficulties can be mitigated in some measure by the reclassification of large groups of articles, but to do that would certainly bring about undue increases on some articles in the group and unwarranted reductions in others. But most probably shippers generally would insist, and justifiably so, that as to their individual articles of commerce, the railroads should make no higher rating than necessary to maintain present revenues. This would result in some weird and abnormal rate adjustments. For instance, at the present time coal, wood, gas, and electric stoves or ranges are rated the same in Southern Classification, viz: 6th class, carload minimum 24,000 pounds. Within Southern territory the manufacture

of coal or wood stoves predominates. By reason of the lower percentage reduction in the proposed interterritorial rates and also because of the influence of the longer haul movement of gas and electric stoves into Southern territory, gas and electric stoves would require a lower rating than coal or wood stoves, if revenues are to be substantially preserved on each kind of stove. To continue the same classification on all these stoves would compel the manufacturers of electric or gas stoves to pay increased rates so as to contribute to the deficit in rates on coal or wood stoves. But [fol. 599] to substantially maintain revenue on each separate kind of stove would make a higher rating on coal or wood stoves than on gas or electric stoves. I don't know how we could justify higher ratings on coal stoves than on electric stoves, nor do I find any justifying reasons for an increase in the rates on electric stoves simply to maintain the revenue on coal or wood stoves. Under the proposed class rate revision and reclassification, we would be compelled to do one or the other. And so it is with a great many other things. Bolts, nuts, washers, staples, nails, spikes, etc., along with scores of other articles of iron and steel are presently rated the same. Each article is listed separately in Southern classification and less carload traffic now moves on the classification rating. To keep revenues intact on each article will result in different ratings, which is contrary to all recognized classification principles. There are no accepted elements or principles of classification-making which would make inflated ratings on bolts, nuts and screws from New England to the South simply in order to hold maintain revenues under the ratings on nails made and shipped within the South. Nor are there any recognized or accepted classification principles that would make the rating on nails higher than on nuts and bolts but we would be compelled to do one or the other under the proposed system of rates and classification. In event such a plan [fol. 600] of class rates and reclassification as contemplated by Exhibit 7 be adopted, the classification committee or such other committees as may be delegated, would undertake to reclassify commodities, or groups of commodities, in such a manner as to maintain revenues of the carriers. The result would be, not a classification at all, but a heterogeneous list or catalog of articles and ratings, devoid of all the elements and principles on which classifications have

always been built. The substance of these things is shown on Exhibit 33.

I offer next a statement of one page, marked for identification as Exhibit 34. The purpose of this exhibit is to demonstrate that where present ratings are uniform or approximately so, in the several rate territories, such uniformity will be disrupted, in fact, entirely destroyed, and that because of the much greater percentage reduction proposed in the rates in Southern than in Official territory, the classification in the South must be increased a substantially greater amount than in the North if revenues are to be maintained under the proposed class rate revision.

I now offer for the record statement of 12 pages, marked for identification as Exhibit 35. Wherever there is now in effect a competitive adjustment of rates from Southern territory to destinations in Official territory reflecting the [fol. 601] destination level, such as the rates prescribed in I. C. C. Docket 27746, such rates, if fitted into the proposed class rate structure in a manner that will keep revenues intact, will become lower than the rates proposed within Official territory for the same distance. On the other hand, if such competitive adjustment of rates be held to the proposed Official territory level of rates as minimum, then the present rates will be substantially increased, and not only increased, but the differential over competing origins within and along the border of Official territory will be increased. These undesirable consequences are portrayed by Exhibit 35 which shows present and proposed rates and revenues on stoves, carload, from seven Southern manufacturing points to nine representative destinations in Central Freight Association territory. In making the exhibit we have assumed a total movement of 1,000 tons from each origin, distributed among the nine destinations in ratio to population. Some explanation is necessary regarding the rates and revenue resulting from application of the proposed C. F. A. class rate scale. Presently stoves and ranges, carload, within Official territory are rated 5th class or 35% of first class. No one can say what percent of the proposed C. F. A. first class scale is necessary to preserve existing revenue as only an extensive revenue test will develop that figure. However, in [fol. 602] Exhibit 35 we have shown what we compute to be the minimum and maximum percent of the proposed first class C. F. A. scale needed to preserve revenue. Our calcu-

lations are shown on pages 8, 9, 10 and 11 of the exhibit. Either the minimum or the maximum proposed C. F. A. rates will increase the present rates on stoves moving from Southern to Official territory, and will also substantially increase the differentials to be paid by the Southern shipper. The only alternative would be to continue rates which will maintain revenue as a whole but to do that would make rates from the South to Official territory lower than for the same distances within Official territory.

In a competitive adjustment of rates, the amount of differential over competing origins is often of greater importance than measure of the rates. If the proposed C. F. A. scale of rates should be applied on any commodity from the South, now having benefit of a competitive adjustment of rates reflecting or approaching the Official territory level, the handicap of the Southern manufacturer would be increased. This comes about because the proposed class rate scales are relatively low for short distances and high for long distances as compared with present class rate scales. This situation with respect to stoves is shown on page 12 of Exhibit 35.

[fol. 603] While this exhibit deals only with stoves, it portrays the situation which would prevail on any and all commodities now having benefit of a competitive adjustment of rates made with relation to the destination level.

In Chapter 14 of Exhibit 7, the third subject or topic, Witness Jensen states at pages 114, 116 and 117, that preference or advantage in freight charges is given to carload shipments in cars 40 feet or greater in length over those in 36 foot cars. It appears this conclusion is based upon the belief stated at pages 114 and 117, that "in general the 36 foot minima can be loaded in 36 foot cars only with difficulty if at all." Exhibit 7 further states that the result has been that the shipper who used a 36 foot car commonly was required to pay freight charges on a greater weight than loaded, while the shipper who used a longer car paid on the actual weight, this being the equivalent of a lower rate per hundred pounds to the shipper who demanded and used longer cars. The witness may have had in mind the carload minimum weights for extremely light and bulky freight but presumably not, because the recommendation set out at pages 122-123 contemplates cancellation of all carload minimum

weights regardless of how heavy the commodity. Since these conclusions are based upon the premise, as stated in the exhibit, that generally the minimum weights cannot [fol. 604] be loaded in 36 foot cars, or can only be loaded with difficulty in 36 foot cars, we would like to present the facts regarding the making of minimum weights and the ability to load the published minimum weights in a 36 foot car. The truth is that only rarely are minimum weights made as high as physical loading possibilities, even in 36 foot cars. Occasional exceptions to this statement are the minimum weights on very light and bulky articles on which, regardless of what the maximum loading possibilities are, it is necessary to fix a minimum weight sufficient to yield adequate per car revenue. Such instances are the exception and not the rule. In fixing carload minimum weights the classification committee and the rate committees as well, are governed, not so much by the cubic capacity or axle capacity of equipment, but rather by practical considerations such as commercial necessity, unit of sale, liability to damage of goods by overloading, the type of container, necessity for floor loading, etc. Perhaps the most controlling of these is what we term commercial necessity, or commercial minimum. This simply means that generally the minimum is made with some relation to the unit of sale, the amount the shipper is able to sell, or more often, the quantity the receiver is able to buy or to use. Aluminum is a fair example. The classification minimum weight on all kinds of alumi- [fol. 605] num is 30,000 pounds which, in normal times, is a considerable quantity for any manufacturer of aluminum articles. While the minimum on aluminum is 30,000 pounds, if loaded only 30 inches from the floor of a 36 foot car, aluminum plates, sheets, bars, billets, pigs or blooms would weight well in excess of 100,000 pounds. Commercial necessity has fixed the minimum for aluminum at 30,000 pounds, although by utilizing only a small part of the cubic capacity a car can be loaded to its axle capacity. Another example is canned goods which, if loaded to cubic capacity, would on the average weigh above 100,000 pounds. The minimum generally is 36,000 poundsson canned goods because not many receivers can handle in excess of that amount. To indicate that very generally the published minimum weights are far below

physical loading possibilities, we offer a statement marked for identification as Exhibit 36, showing a list of all articles on which classification changes were made last year. While Exhibit 36 embraces only a little more than 300 articles, it is a pretty fair cross section of the classification and of the commodity rate tariffs. This statement shows the classification minimum weight, the average weight per cubic foot and the total weight if loaded to cubic capacity of 36 foot and 40 foot cars. On the average, 36 foot cars contain 2495 cubic feet and 40 foot cars 3171 [fol. 606] cubic feet. For purposes of this exhibit the calculations are based on only 2400 cubic feet for 36 foot cars and 3100 cubic feet for 40 foot cars, these being the figures ordinarily used by the classification committees. The statement shows that save for a relatively few extremely light and bulky articles the published minimum weights are generally very much lower than the quantity which can be loaded in 36 foot cars.

I offer next a statement of 3 pages marked for identification Exhibit 38. This is a statement prepared by the Southern Weighing & Inspection Bureau during 1937. It is the latest information of the sort available to me but the statement shows that even in more normal times very light and bulky articles such as agricultural implements, scrap, jute bagging, tight barrels, corrugated paper boxes, set-up wooden boxes, tin cans, scrap paper, moss, woven wire fencing and the like, can be and are loaded in smaller equipment. While this statement embraces only 307 36 foot cars and 3,444 40 foot cars which were actually loaded or unloaded at points in Southern territory, it is fairly representative. Of the 3,751 cars included in the exhibit, practically every one was loaded in excess of the applicable minimum weight.

At page 115 of Exhibit 7 it is stated that the railroads have aggravated the discrimination or favoritism resulting from the relative ability to load in 36 foot and 40 foot [fol. 607] cars. On the average, 36 foot cars contain 2495 cubic feet and 40 foot cars 3171 cubic feet. For purposes of this exhibit the calculations are based on only 2400 cubic feet for 36 foot cars and 3100 cubic feet for 40 foot cars, these being the figures ordinarily used by the classification committees. The statement shows that save for a relatively few extremely light and bulky articles the published

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[fol. 608] At page 115 of Exhibit 7 it is stated that the railroads have aggravated the discrimination or favoritism resulting from the relative ability to load in 36 foot and 40 foot cars by making the minima on 36 foot cars applicable to shipments in 40 foot cars as well. We do not understand how this could be. In the course of time the 40 foot car supplanted the 36 foot car as standard equipment. As of July 1, 1938, there were 127,165 36 foot box cars, and 612,711 40 foot cars, counting as 36 foot cars all box cars not exceeding 37 feet and counting as 40 foot cars all box cars not exceeding 41 feet in length. As stated at page 113 of Exhibit 7 the manufacturers and the shipping public generally have been seeking means for distributing goods in smaller lots, hence, more often than not, the demand has been for box cars carrying the lowest minimum weight. With a growing demand for 36 foot cars and an increasing supply of 40 foot cars the railroads did the practical thing and accommodated the supply to the demand by making the 36 foot minimum applicable on shipments in 40 foot cars. Actually little or no change resulted because it was common practice to supply 40 foot cars where 36 foot cars were ordered, the carriers having an abundance of 40 foot cars and a dearth of 36 foot cars.

All of the discussion and conclusions set out in Chapter 14 of Exhibit 7 relating to carload minimum weights [fol. 609] applicable to box cars of various sizes constitute

the foundation for the suggested system of carload rates described in Chapter 15 of Exhibit 7 at pages 122 and 123, viz: discontinuance of all carload minimum weights except for heavy freight ordinarily shipped in bulk at or near weight carrying capacity of the car; the substitution of a minimum carload charge applicable on any and all freight, such minimum charge to be the least amount for which the railroads can move the smallest box cars; all freight in excess of the quantity required to yield the minimum charge to be subject to a percentage discount. Regardless of the merits of such a plan of carload rates there are certain features which are not only objectionable but which might well be disastrous to the railroads. In the first place, and of greatest importance to the railroads is the revenue loss which would result from such a system of carload rates. The proposal contemplates a basic minimum carload charge which would be the same on any and all carload freight, such minimum carload charge to be a fixed multiple of the first class rate from origin to destination and to be equivalent to the least amount for which the railroads can profitably move the smallest box cars in general service today. To begin with, this means very heavy reductions in the present minimum per car charges on all but the very lowest-paying freight. In [fol. 610] other words, a substantial reduction in the minimum per car charge on most of the carload freight now moving. In addition, it is proposed to apply a discount of 25%, or some other amount, on all carload freight over and above the quantity required to yield the minimum charge. The average loading of carload freight is in excess of the present minimum weights. Under the proposed scheme of carload rates the average loading should become even greater. The heavier the loading the lower the charges, hence lower revenue. While Exhibit 7 emphasizes repeatedly that the suggested rate revision is not designed to diminish railway revenues there is simply no way to make effective the proposed system of carload rates described in Chapter 15 of Exhibit 7 without ruinous revenue losses. With a minimum per car charge much less than at present, plus a discount on all freight in excess of the minimum quantity, heavy revenue losses are bound to result.

Another undesirable feature of the proposed system of carload rates is the resulting difference in freight charges for the same quantity of freight loaded in box cars of different size. Under this proposal, whatever the commodity, and whatever may be actual weight of the shipment, invariably the charges will be less on shipments in 36 foot cars than in cars of 40 feet or more. In computing freight charges under this plan, actual weight of the [fol. 611] shipment is multiplied by the carload rate—from the amount thus determined the mipimum carload charge is deducted and to the remainder a discount of 25% is applied. Using the example set out in Exhibit 7 at page 123, tinfoil, presently rated Class 50, minimum 30,000 pounds, the present minimum per car revenue is $300.00, assuming a first class rate of $2.00. Under the proposed plan the charges on 30,000 pounds of tinfoil loaded in a 36 foot car would be $255.00, but the same weight of tinfoil if loaded in a 40 foot car would pay $262.50. Shippers will very naturally and properly order and use the size car which will give them benefit of the lowest freight charges, viz: 36 foot cars. Since a preponderance of all carload freight can be loaded to the desired weight in 36 foot cars, the result will be to create a great demand for 36 foot cars, making 40 foot cars less desirable, notwithstanding the railroads have in service about five times as many 40 foot box cars as 36 foot cars.

Another probable result of this kind of carload rate adjustment will be injury to the small shipper or receiver. In Southern territory the communities are relatively small and the smaller receivers predominate. For example, in the 10 states wholly or partly within Southern territory there are but five cities having a population as great as 200,000 and three of these are border points, leaving [fol. 612] but two cities inside the borders of Southern territory with population as great as 200,000. Under the proposal, the heavier the load the lower the rate per hundredweight. In some measure this will operate against the many smaller receivers and to the advantage of the relatively few receivers who are in position to accept very heavy carloads.

Mr. Gwathmey: Mr. Chairman, may I ask that the exhibits that have been identified and explained by the witness now marked Nos. 32 to 37, both inclusive, be received in evidence.

Chairman Aitchison: Is there any objection to the receipt in evidence of Exhibits 32 to 37, inclusive? (No response.) If not, they are received.

(Exhibits 32 to 37, inclusive, Witness Boyle, received in evidence.)

Mr. Gwathmey: The witness is tendered for cross-examination.

Chairman Aitchison: Mr. A. L. Reed.

Cross-examination.

By Mr. Reed:

Q. Mr. Boyle, your Exhibits 32 to 37, inclusive, will show a comparison of the motor trucks' common carrier class scales in any of the territories as compared with the scales suggested by Mr. Jensen, is that correct? For instance, we will take Southwestern territory or Southern territory.

[fol. 613] A. Compare the existing motor truck scales with Mr. Jensen's scale?

Q. Yes.

Q. I did not prepare any such exhibit.

Q. What is the basis of your statement that his suggestion would maintain, substantially, the existing common carrier motor truck rates for short hauls and increase the rates for the longer hauls?

A. I thought I had stated that in the direct testimony. Mr. Jensen set forth certain average hauls. The computations that we have made, as shown in these exhibits, indicate rather clearly, to us at least, that what actually will happen is largely the preservation of revenue for hauls for the shorter distances, certainly under 500 miles, and very substantial increases for all distances above that.

Q. My question was this: I understand you did make the statement in your direct testimony, and I desire to have the information upon which you predicated that statement.

A. Mr. Reed, would you point to that part of the testimony?

Q. Yes. On page 3, the last sentence, or the next to the last sentence.

A. Just a minute.

Mr. Reed: Would you mind my reading that, Mr. Chair-
[fol. 614] man? Chairman Aitchison: You may read it.
Mr. Reed: "So far as motor truck operation be concerned, the result will be no great change for the relatively short distances but an opportunity for more profitable operation for longer distances."

By Mr. Reed:

Q. I desire to know the information that you have upon which you made that statement, where we may find that information.

A. I base that statement on the preceding text, and it is largely opinion on my part.

Q. You have no figures or exhibits that would substantiate that statement with respect to first, the Southern territory, or the Western territory?

A. None, other than those shown in Mr. Jensen's study.

Mr. Reed: Thank you.

Chairman Aitchison: Is there any further cross examination?

Mr. Norman: I have one or two questions.

Chairman Aitchison: Mr. Norman.

By Mr. Norman:

Q. I would like to ask the witness if I am correct in reaching the conclusion from a hasty examination of his testimony and exhibits that he undertakes to show that the proposal of Mr. Jensen is impractical and unworkable.

A. Wholly so.

[fol. 615] Mr. Norman: That is all.

By Mr. Aitchison:

Q. Are you the witness on this classification matter for the Southern Lines?

A. I beg your pardon?

Q. Are you the witness on this classification matter for the Southern Lines?

A. Yes, sir.

Q. What do you propose to do, just continue on with the Southern Classification, or are you going to take any steps looking toward the achievement of uniformity with the other classifications?

A. Do you mean, Mr. Chairman, what are we going to do with our existing class rate scales?

Q. I am referring to the classification.

A. I mean, what shall we do with our existing classification as applied to the present rates?

Chairman Aitchison: I did not say anything about rates at all.

By Chairman Aitchison:

Q. I asked you if you are going to do anything about bringing the classifications into a greater uniformity, or into uniformity. In other words, are you going to do anything about bringing the Southern classification into uniformity with the classifications in the other territories?

A. No, sir.

[fol. 616] Q. You just want to get off in a corner with your Southern Classification, all by yourself?

A. I don't understand——

Q. You know what a uniform classification of the country is, but you are not taking any steps to bring it about. That is what I am asking.

A. No, indeed. We are not taking any steps to bring about a uniform classification in the country. My judgment is that it is undesirable, and that a uniform classification is not responsive to the needs of the shipping public nor to the railroads.

Q. We have a uniform classification as to express, have we not?

A. As to express?

Q. Yes.

A. Yes, sir.

Q. It competes with you; does it not?

A. I do not say that it does compete, no, sir.

Q. For less than carload movement, particularly?

A. I would say that express, perhaps, competes with the highway operators.

Chairman Aitchison: Read the answer, Mr. Reporter.

(Answer read.)

The Witness: During all of my experience, I have never considered that there is competition between railway express [fol. 617] and railway less than carload freight service. They are two separate services.

By Chairman Aitchison:

Q. How about parcel post? They have uniform classification, do they not?

A. Yes.

Q. Does that compete with your less than carload service at all?

A. Very little. It competes with express service and highway service, I would say, but not with less than carload freight service.

Q. Have you not made some changes in the classification of a nation-wide character lately, by putting in any-commodity rates so that the change necessarily becomes uniform whereever it is applied?

A. Numerous so-called all-commodity rates have been extended far and wide, but it was certainly not done as a classification matter. That is anything but classification.

Q. Well, you can have a classification simply by saying "All of our commodities take the same rates". That is a classification.

A. I do not concede that. The Commission has not said so. In 25 I. C. C. they said it was a grouping of commodities according to the transportation characteristics of commodities and other elements.

Q. A grouping of commodities according to transporta- [fol. 618] tion characteristics which entitle them to a given rate basis.

A. Yes.

Q. I know that. We are to take it then that the efforts which have been made in the past running back to 1888 still have not met with any sympathy at all in your Association—that is, the movement for an even greater degree of uniformity in classification—because you think that classification has to be responsive to the needs?

A. We have within recent years done a great deal of work for bringing about classification uniformity as to less than carload freight.

Q. Well, why did you do that? Were you not disregarding the needs of your patrons when you did that?

A. In my judgment we were.

Q. It was an unwise thing to do, was it?

A. In my opinion that is unwise. A classification applicable wholly within some particular territory is not applicable to the needs of the shippers and the railroads in an-

other territory. You have entirely different first class rates to run against.

Q. Are the needs of the shippers and the railroads in your territory sufficiently homogeneous so that you can have a classification of freight which is uniform over that territory?

A. Uniform within our own territory?

[fol. 619] Q. Yes.

A. I think so, largely.

Q. The needs of both carriers and shippers are homogeneous, largely, over the territory?

A. Yes, sir.

Q. You have no exceptions to the classification in your territory?

A. In our territory, the exceptions are the classification.

Q. The exceptions that you refer to have the same territorial scope as the classification itself, do they not?

A. Precisely the same.

Q. And the needs, even with respect to exceptions, are the same the territory over?

A. Generally so.

Chairman Aitchison: In other words, the exceptions are the classification, as you say, having general application.

By Chairman Aitchison:

Q. What investigation have you made as to whether the needs of carriers and the shippers in Official territory may not be identical with the needs of the shippers and the carriers in your territory, so we can have your classification, we will say, extended over to them?

A. I have not made any such investigation within Official territory.

Q. Or any other territory?

A. That is true.

[fol. 620] Q. Then how are you to say that a uniform classification would be to the disadvantage of the shippers in your territory?

A. It would be to the disadvantage of shippers and railroads in our territory to the extent that something else would be proper in the West or the East.

Q. I am not talking about the railroads and the shippers in some other territory. I am confining this to your territory. If the Southern Classification was made the basis of

a uniform classification throughout the country, what objection would you have?

A. None whatever.

Q. Is classification such a precise science that absolute justice is done to all commodities and everything that moves, or is it a matter of averages?

A. I am sorry, Mr. Chairman, but I could not hear your question.

Chairman Aitchison: Read the question, please.

(Question read.)

A. It is more nearly a matter of averages. It is not a precise science, sir.

By Chairman Aitchison:

Q. There has to be a certain amount of give and take, then?

A. Yes.

Q. Both by the shippers and by the carriers?

[fol. 621] A. Yes.

Q. As between shippers and different commodities?

A. Yes.

Q. Are you able to tell us whether or not there could not be a give and take here in order to bring about a uniform classification?

A. I think that is within the bounds of possibility.

Q. Your people have not offered to give or take, though, with respect to bringing about a uniform classification, or have not explored its possibilities?

A. Our people, sir, are willing to explore its possibilities.

Q. You have not done it, have you?

A. No, sir, we have not.

Q. The extent you may be willing to explore its possibilities has been given impetus by the fact that the Commission has that question now before it, is that right?

A. Mr. Commissioner, I apologize. I am very sorry, but I am unable to hear you.

Q. What I am getting at is that the thing which is making you say you are willing to consider for the future whether there can be a give and take is the fact that the Commission has in this formal investigation, that very question before it now. Is there anything else that makes

you willing to consider a give and take proposition in the interest of a uniform classification?

[fol. 622] A. We certainly would be willing, were there no classification investigation, to cooperate and study the possibility of a uniform classification, but invariably we would hold to what we thought was the best for us and the best for our shippers, regardless of any other classification territory, and in the end we would make our classification, even though it resulted in non-uniformity. I mean, that is my opinion and judgment.

Q. Are you familiar with the history of attempts to get uniform classification in the country?

A. Attempts to get uniform classification?

Q. Yes.

A. Yes, sir. I am more or less familiar with them.

Q. Was there a time when the Southern lines agreed to it?

A. I am sorry, but I do not know.

Q. I take it that your study, then, has not put you in a position to give us any helpful suggestions with respect to what the character of such a uniform classification should be?

A. No, sir.

Q. Either the number of classes, the gradation of the class rates as between the classes, or with respect to the assignment of various commodities to the different classes?

A. No, sir. I made no preparation that would be helpful to the Commission in that respect. Rather, my entire [fol. 623] preparation was to set out from our point of view the impossibility of a classification such as suggested by Mr. Jensen. Beyond that preparation, I did not go.

Q. Mr. Jensen has just made some suggestions. No one is necessarily bound by them. Certainly the Commission is not, because we did not know what he was going to say until he went on the stand.

A. I understand that.

Q. This is an investigation. If you or anyone representing respondents has anything to suggest with respect to this question of uniform classification other than what you have told us, we would be very glad to hear it.

A. I have no suggestion to make to the Commission except to recommend highly the Southern Classification and its exceptions.

Chairman Aitchison: Is there any further cross-examination?

Mr. Norman: May I ask one more question?

Chairman Aitchison: Mr. Norman.

Mr. Norman: I asked a question of a previous witness who said that it could be better answered by the classification witness. I suppose therefore it is proper to ask it of this witness.

By Mr. Norman:

Q. Mr. Boyle, the Southern carriers published, effective September 1, 1940, rates and ratings on many commodities [fol. 624] as exceptions to the classification and in a statement to the Commission represented that those would be put in the classification. It appears that two years have elapsed and that has not been done. Can you tell us why it has not been done and when it will be done?

A. I can give you an explanation of that. It will perhaps take a little bit of background. We published these some 3200 ratings in our exceptions as a temporary expedient. The attempt was ultimately to bring most of them, if not all of them, into the classification proper, but the Commission instituted an investigation on those ratings and that held fire for quite a long time, a year or a year and a half. In addition, we had this classification investigation No. 28310. The present mode of publication being reasonably satisfactory, so far as we know, we simply did not pursue it.

Q. Well, is it your purpose to pursue it?

A. That depends upon what sort of classification may come out of this investigation. We certainly are not going to pursue it until these proceedings are brought to an end.

Q. You knew at the time that you represented to the Commission that you were going to put them in the classification, these proceedings were pending, did you not?

A. I believe so.

Q. Notwithstanding that knowledge, you represented [fol. 625] that you were going to do that?

A. Yes. We represented we were going to bring them into the classification. Bear in mind also that the publication of anything in the Consolidated Freight Classification carries with it the concurrence of all the lines in the West, all the lines in the East and all the lines in the South. I do not know for sure that we would secure that concurrence.

We probably would not secure it, in respect to every item in our exceptions.

Q. Well, you could secure the concurrence in the publication of the rates, could you not?

A. But not the classification.

Q. Why did you represent that you were going to put it in the classification if you did not think you could secure the necessary concurrence to do it?

A. It was our firm intent to bring these exceptions ratings, or most of them, into the Southern Classification, but as I have said, the ratings were put under investigation and we thought as long as that investigation was pending, it would be better to keep the ratings segregated into one book, rather than to scatter them throughout the classification.

By Chairman Aitchison:

Q. Just for the sake of the record, what happened to that investigation?

A. It was dismissed, not very long ago, discontinued.

[fol. 626] Mr. Norman: One more question.

By Mr. Norman:

Q. Is it not a fact, Mr. Boyle, that had you carried out the representation you made to the Commission all those rates and ratings would be involved in this proceeding; and your failure to carry it out causes them to be excluded from this proceeding?

A. I think you are exactly correct.

Q. Did that have anything to do with your failure to carry out your representation?

A. No.

Mr. Norman: That is all.

Commissioner Alldredge: I have one question.

By Commissioner Alldredge:

Q. Mr. Boyle, have the Southern carriers changed their minds about making their ratings permanent?

A. Not to my knowledge. I have heard no complaint about them, and they were designed as permanent ratings. So far as I am informed they are permanent ratings, to the extent that the class rates are permanent, of course.

Q. Inasmuch as you made the statement to the Commission at the prehearing Conference, I think it was, or possibly before the Suspension Board, that you were going to put them in the Classification and you made that statement during the pendency of this investigation, just what is it that caused you to change your mind?

[fol. 627] A. Mr. Commissioner, we have not changed our minds that I know of.

Q. Well, did you not change it to the extent of waiting until these investigations are out of the way?

A. No, sir. We were compelled to hold off our efforts to bring them into the classification because the Commission had every one of the ratings under investigation until a very few months ago.

Q. They were in effect, were they not?

A. Yes.

Q. Did that compel you to put them in exceptions rather than into the main classification?

A. No.

Chairman Aitchison: They were not held up by any suspension or other proceeding of the Commission. You could have put them in on 30 days' notice, if you wanted to.

The Witness: That is true.

Chairman Aitchison: Are there any other questions of this witness?

Mr. Smelker: I have one or two questions, Mr. Chairman.

Chairman Aitchison: Mr. Smelker.

By Mr. Smelker:

Q. Mr. Boyle, will you turn to Exhibit 36, page 1, and to the second column headed "Average weight per cubit foot".

[fol. 628] A. Yes.

Q. Very briefly, what was the source of the material used in that column?

A. The average weights per cubic foot shown on Exhibit 36 are the weights furnished by shippers making applications to the Classification Committees for classification changes.

Q. Did you make any checks or physical measurements yourself or did anybody on the Committee?

A. We accepted the information furnished by shippers seeking classification changes. It was not checked by actual

measurements or weighing. We did check their computations in every instance.

Q. In your opinion, Mr. Boyle, what are the more important characteristics today governing the classification of any particular commodity?

A. You mean, the most important element of classification?

Q. That is right.

A. There are, perhaps, elements more important than others. There is no one controlling element.

Q. What about density?

A. Perhaps weight density is given as much weight in considering classification as any other one thing.

Q. How about value?

A. Value, of course, is considered and we think properly so, but in recent years we have not let value control to the [fol. 629] extent that it has in other years.

Q. Are you referring now to ten years or fifteen years back?

A. Yes.

Mr. Smelker: That is all, Mr. Chairman.

Chairman Aitchison: Is there anything further of this witness?

Mr. Cotterill: I have a few questions, if the Chairman please.

Chairman Aitchison: Mr. Cotterill.

By Mr. Cotterill:

Q. Mr. Boyle, in view of your discussion of the September 1, 1940, exceptions, will you now kindly advise the Commission your understanding of the reason or reasons why they were brought out at all?

A. Advise the Commission why we made this revision?

Q. Yes. Why did you in that way cause your exceptions to become your classification, virtually?

A. Of course, I cannot give you all of the reasons. They are known only to the individual traffic officers of the lines themselves.

Q. Are you not the principal author of the plan personally?

A. I had nothing whatever to do with the plan. I had only to do with the mechanics of publishing.

Q. Proceed.

A. I know of several reasons which brought about this revision which, incidentally, was in our judgment, modest, [fol. 630] not radical, and altogether proper. Its effect on less than carload revenue was very slight indeed. To begin with, the ratings, approximately one-third of the ratings in the classification were dealt with and two-thirds of the ratings were undisturbed. These less than carload ratings had not been under review for perhaps a generation. Certainly they were not made in the light of modern conditions. They were not even made at all by present day railroad men. They were inherited, largely. They needed review. They needed modernizing. We went very carefully over every item in the classification and we have made these changes for one of several reasons. For example, we found in some instances, in many instances, in fact, three less than carload ratings on the same article; sometimes four. In remote instances, we had five or six less than carload ratings. That sort of classification was not responsive to present day needs of commerce and of transportation, so we tried to make one less than carload rating on an article.

Chairman Aitchison: May I interrupt you there just a minute?

The Witness: Yes.

Chairman Aitchison: As I understand it, those six ratings on less than carload, are still to be found in the Southern Classification?

[fol. 631] The Witness: They are.

Chairman Aitchison: Proceed.

The Witness: Where an article was rated differently in different packages, that we noted more often than not that value to the exclusion of everything else had fixed the higher rating. If the packages were acceptable for freight transportation, we adopted the lower rating for all kinds of acceptable packing, thus giving less weight to the value element. Another change that we made was in some instances, purposely, to reduce the spread between a carload and a less than carload rating. There were instances of first class, less than carload, and seventh or eighth class in carloads. In giving these reasons, Mr. Cotterill, I am going to give you the one you want.

Mr. Cotterill: I hope so, eventually.

The Witness: We had in mind, of course, highway competition. I do not mean by that, that we were compelled to make these changes to meet motor truck rates. That was not true. However, the railroads had known for some time that this particular class of traffic had very largely disappeared, and a preponderance of it had gone from the railroads. That indicated on its face that something was wrong with the price structure of the railroad.

Chairman: Aitchison: Did you say gone to the railroads?

The Witness: From them.

[fol. 632] Chairman Aitchison: From them.

The Witness: Yes. That indicated that the pricing of the less than carload service on this group of articles was wrong, for the service involved. That had its influence, but I had said to my principals and to others, that in my judgment many, many of these changes ought to have been made in the classification if there were not a highway or a truck in existence. Good classification making would dictate these reduced ratings in many instances. I will confess, too, that in remote instances we reduced the ratings and they were ill advised. I think if a second study were made we would find a few here and there that ought not to have been changed, but by and large, considering the 3200 ratings, I think they do reflect present day classification trends and necessities.

By Mr. Cotterill:

Q. Having enumerated the reasons why changes were made, will you advise the Commission why those changes took the form of reductions?

A. (No answer.)

Q. If you wanted to bring together six descriptions of a given less than carload shipment, what prompted the conclusion to bring them together by reducing all of the higher to the lowest of the six?

A. That, of course, is an extreme case.

Q. I thought so.

[fol. 633] A. Reducing all of the higher to the lowest of the six.

Q. In the case where you thought——

Chairman Aitchison: Just a minute.

Mr. Cotterill: Pardon me.

Chairman Aitchison: Did you finish your answer?

Mr. Cotterill: I may have misunderstood him. I thought he had finished.

By Mr. Cotterill:

Q. Had you finished?

A. Yes.

Chairman Aitchison: Proceed.

By Mr. Cotterill:

Q. In those cases where you thought the spreads between carload and less than carload ratings were somewhat too wide, why was the reduction of the spread accomplished by a reduction in the higher of the two rates?

A. In effect you are asking why, if we had to make this revision, we did not go up instead of down.

Q. Or perhaps have equalized it. Why did it take the form of a general rate reduction?

A. It took the form of a general rate reduction for precisely the reasons I have stated, compelling the revision. I think it is obvious that we would not have been permitted to have equalized by increasing any great number of ratings, say one-half of them or one-third of them.

Q. You would not have been permitted by whom?

A. The Interstate Commerce Commission, because in [fol. 633] numerous cases the ratings we adopted, the lower ratings, had been fixed by the Commission itself.

Q. Is it always obvious to you what the Interstate Commerce Commission might do under future circumstances?

A. (No answer.)

Q. That is just a pleasantry. Proceed.

A. There was hardly any other way to make this revision.

Q. Have you finished, sir.

A. Yes.

Q. So far as you alluded to your awareness of the existence and the economic consequence of the motor carrier industry, have you gentlemen determined that this wholesale reduction of merchandise rates changed or did not change your tonnage position relative to the motor carriers, having before you Witness Crane's Exhibit 17-A?

A. I have no knowledge of whether these revised merchandise ratings increased the railway less than carload

freight. It is my firm conviction that they halted the erosion of the high class less than carload freight which, for a period of years, had continued to flow rapidly away from the railroads.

Q. Were not your reduced rates instantly met by the motor carriers?

A. They were, including all the typographical errors.

Q. That is what you call meeting competition, is it not? [fol. 635] A. It surely is, but I might add there that the motor carriers in publishing, in photographing our rates went far beyond the publication we made and added lower rates to a great part of Southern territory because they failed to observe the Official territory rates as minimum, so when the revision had taken place, the railroads were in a greater disadvantage from a competitive rate standpoint than before.

Mr. Cotterill: Well then, it did not help you very much from that angle, did it?

By Mr. Cotterill:

Q. In respect to this matter of reducing the less-than carload rates and bringing them closer to the level of the carload rates, did that not have the effect, and was not one of the purposes in doing so to preclude the threatened development of greater freight forwarder operations into Southern territory?

A. I never heard of any such reason in connection with this merchandise revision.

Q. Were you a witness in the case before the Interstate Commerce Commission involving a subsequent suspension of all-freight rates which your line put in—I have forgotten the publication to which I have reference dealing with those all-freight rates—from the East to the South?

A. I recall the case. I took no part in it whatever. I did not testify or even read anything about it.

Q. You have no understanding as to what the witnesses [fol. 636] for other railroads in the South in that case and also the Pennsylvania Railroad said was the principal motive underlying that September 1, 1940, slashing of merchandise rates?

A. I do not know what was said, but if it was different from what I have just given you, it is new to me.

Q. Mr. Boyle, in conclusion, having made, quite properly, the observation that your exceptions today constitute your classification——

A. Well, Mr. Cotterill, what I meant——

Q. —in substance, I mean—have you any reasons to advance why there should, at one and the same time, be in existence an artificial classification and a myriad of exceptions upon which the business is moving? Is it not requisite that they be brought together in some proper form—I am not speaking of your particular exceptions now—to make one document out of the class rates?

A. You mean, to gather all of the ratings into one cover?

Q. Is there any excuse for the simultaneous existence of a freight classification and a large mass of exceptions having co-extensive territorial application, I do not care what the nature of the exceptions may be?

A. I agree fully with you, sir.

Mr. Cotterill: Yes.

By Mr. Cotterill:

Q. Is there anything else you can think of in that regard that would distinguish the South from the North or West? [fol. 637] Do you see any sense in this undertaking to make rates through classification exceptions?

A. Oh, yes, I see a lot of sense in making rates through classification exceptions.

Q. In any such wholesale manner as that?

A. Yes, because at the time of the publication of these ratings in the exceptions, they were compelled by necessity. We wanted them quickly. It is comparatively easy to reissue Southern exceptions. It is a far more difficult and intricate thing to reissue the Consolidated Freight Classification. There was very good reason for putting them into the exceptions originally.

Mr. Cotterill: I think that is all. Thank you.

Mr. Norman: Mr. Chairman, I apologize for coming back two or three times, but they keep bringing up new subjects, in the witness' testimony, and I would like to ask the witness one or two more questions with reference to these all-commodity rates.

Chairman Aitchison: Very well.

By Mr. Norman:

Q. You testified that you did not understand that the revenues of the Southern carriers had been increased by these numerous exceptions of September, 1940. Now, what is the fact with respect to this all-commodity rate?

A. Sir, I do not have first hand knowledge of the all-[fol. 638] commodity rates. They started those things after I got off the railroad, and I have not kept abreast of them. I know very little about them, except hearsay. I cannot answer your question.

Q. You do not know the effect of them?

A. No, sir.

Q. Either on revenue or traffic?

A. I do not know.

Mr. Norman: One more question with reference to this concurrence.

By Mr. Norman:

Q. You would not have to get any different concurrence or different kind of concurrence or pursue any different procedure in securing the necessary concurrence to put those exceptions in the classification than in the case of the original publication, would you?

A. Yes. I would have to secure a wholly different concurrence. It would be as different as day and night, the procedure. These exceptions to which we have been referring were not worked out by the Classification Committees at all. The Classification Committees had little or nothing to do with them. They were worked out by rate committees. They were adopted by rate committees in Official and Western territories, but not Classification Committees. Whether or not these ratings would have been acceptable to the classification people I cannot tell.

[fol. 639] Chairman Aitchison: What do you mean by "classification people"?

The Witness: I mean, the members of the several classification committees.

By Chairman Aitchison:

Q. Do they exercise a veto power upon rates and ratings, or rather, classification ratings which are made within Southern territory?

A. Oh, no. They do not exercise any veto powers at all.

Q. Then can you not change and do you not change the ratings in Southern territory constantly without the consent of other classification committees, in Official territory or in Western territory?

A. If I understand your question, Mr. Chairman, it is whether the Southern Classification Committee might make any change it desired in the Southern Classification without the concurrence of the Official and Western Committees.

Q. That is right.

A. We cannot do it because the Southern Classification applies interterritorially. We must have the concurrence of all the lines. The Southern Classification has application from Western Trunk Line territory into the South. It has application in both directions between Official and Southern territories. The other committees have as much of a hand in fixing Southern Classification ratings as does the Southern Classification Committee.

[fol. 640] By Mr. Norman:

Q. You would have to get the concurrence from the same railroads, although it might be a different committee of those railroads?

A. Yes.

Q. Is that it?

A. That is right.

Mr. Norman: That is all.

Chairman Aitchison: Are there any further questions of this witness? Commissioner Splawn has a question.

By Commissioner Splawn:

Q. Mr. Boyle, in recounting your reasons a while ago in response to Mr. Cotterill's question, for your action in 1940, I gathered that you thought the conferences between classification officials and the study of your ratings resulted in valuable improvements. Is that impression correct?

A. We think that this merchandise revision does constitute a valuable improvement in classification.

Q. In order to bring it about you had conferences with officials from different railroads from different parts of Southern territory and a good many compromises, is that right?

A. True.

Q. Now, in response to the Chairman's questions a while ago, I understood that you are somewhat wedded to the [fol. 641] present Southern Classification.

A. (No answer.)

Q. Would you be willing, the people who worked out these changes for the Southern lines, that the Southern lines published, to go into similar conferences with the classification officials of the Official lines, Central Freight Association territory lines and Western lines, with a view to seeing to what extent uniformity could be achieved, advising the Commission wherein it could not be achieved and why?

A. I think that we could not have any objection to such conferences.

Q. If your conferences a few years ago resulting in the tariff that you published in 1940 were so fruitful in your judgment, might not some similar advances and improvements be made on a nationwide scale through cooperation of the officials or the railroads' classification committees?

A. Such an improvement or change might well flow from such conferences and efforts. Of course I have no way of knowing that it would. It might.

Q. So far as you are concerned, you are willing, as a classification expert employed by the railroads to cooperate with others in similar positions in different parts of the country with a view to working out something constructive and bringing it to this Commission?

[fol. 642] A. Yes, sir. I think we would be entirely willing to cooperate in such an effort.

Q. If such an effort as that be entered into with the same enthusiasm and energy with which you have properly undertaken to point out errors in statements by employees of the Commission, may we not hope that as a result of this investigation such improvements in the class rates as will redound to the benefit of the country may be discovered and brought to light and probably eventually be published in the many tariffs?

A. You said "class rates." I take it you meant "classification."

Q. Classification and ratings. I misspoke myself.

A. Bear in mind, Mr. Commissioner, that the answer to that would of necessity have to come from my principals, but speaking personally, it appears to have possibilities, and I see no reason why we should not enter such a

program in the spirit of cooperation and wholeheartedly.

Q. You recognize that among the shippers there are experts of great ability and experience who would likewise in a cooperative undertaking enter into such efforts of exploration and discovery for the purpose of informing the judgment of this Commission.

A. Yes, sir. I have great admiration for the abilities of shippers. I think more than any other group, they make [fol. 643] our classification ratings, because they and not the classification people have the benefit of all the information. Each in his own line is an expert, and we largely follow the advice and counsel they give us in adopting new ratings and new descriptions. It would be very helpful.

Q. If this problem can be studied in line with some implication of the questions here by some of counsel working out the correct answer regardless of whether the resulting ratings might increase or decrease in the future, may we not hope within a reasonable time to make some progress in clarifying the questions involved in this investigation?

A. To make sure I give you an accurate answer, Mr. Commissioner, I am going to ask you to have the reporter read the question.

Commissioner Splawn: Read the question, please, Mr. Reporter.

(Question read.)

A. Mr. Commissioner, I doubt that I am qualified to make an answer to that. It seems to me that involves matters of policy and principles which will have to be fixed by the railroads whom I represent.

Commissioner Splawn: I am not asking you to commit them. I am just inquiring as to whether, in your opinion as a classification expert, that is not a practical objective that I have tried to set out.

[fol. 644] The Witness: I think it is a practical objective.

Chairman Aitchison: In other words, the word "cooperation" is defined as your doing the thing the way I want to do it.

By Chairman Aitchison.

Q. I understand from your testimony that the Southern Classification is the one and the only one which meets the needs of the Southern shippers and carriers. Will

you not have to change that attitude a little before you can go into a conference such as Commissioner Splawn indicated, and really cooperate?

A. To be sure you would. I want to make it clear that while we feel our classification as it has been modified by the exceptions is more nearly responsive to the needs and the necessities within the South, I have no doubt that the Official and the Western classifications fit just as well in the situations they are in.

Q. You are simply making it clear that unless they also change their point of view, that cooperation Commissioner Splawn indicated would be impossible?

A. I do not know that it is. We have succeeded within the past few years in bringing about complete uniformity as to the first three class ratings throughout the country. How much further we can go beyond that, I do not know. Every time you try it, there are really tough problems to overcome.

[fol. 645] Q. Has anything been done along that line in a concerted way since this proceeding was instituted?

A. Nothing except that we have, in my opinion, made a great improvement in the form of the classification, and we changed a great many ratings, and a great many minimum weights to bring about the uniformity. We tried to make some improvement, but beyond the first three classes, nothing of a substantial nature has been accomplished.

Q. You mean, below?

A. Below, yes.

Q. I still think you are left in this position: You are making these changes just as fast as you can, but you think that the Southern Classification is all right. Nevertheless, you take 3200 exceptions to it.

A. I know we do. In speaking of classification, Mr. Chairman, we use the term in the same sense Mr. Jensen did, that it embraced these exceptions. We have considered that in our classification.

Q. But not for interterritorial application?

A. Oh, they do apply interterritorially.

Q. Provided they are concurred in?

A. The present rates in the exceptions have identically the same application as if they were published in the classification.

Q. The same carriers exactly have concurred?

[fol. 646] A. Precisely.

Q. Water lines and all?

A. That is correct.

Chairman Aitchison: Are there any other questions of Mr. Boyle? (No response.) If not, you are excused.

(Witness excused.)

Chairman Aitchison: We will suspend until two o'clock.

(At 12:30 o'clock P. M. recess taken to 2:00 o'clock P. M.)

[fol. 647] AFTERNOON SESSION

The hearing was resumed pursuant to recess.

2 P. M.

Chairman Aitchison: Come to order.

Mr. Smelker: If the Commission please, there were two packages of exhibits lost in transit. One package contained Exhibit No. 9, Dr. Stevens' Exhibit: and the other, Exhibit No. 10, Dr. Aitchison's exhibit. They have now been found, and copies will be distributed to those who did not get them, after this session.

Chairman Aitchison: Proceed.

Mr. Gwathmey: Call Mr. John N. Steadwell.

JOHN N. STEADWELL, was sworn and testified as follows:

Direct-examination.

By Mr. Gwathmey:

Q. Please state your name, residence and occupation.

A. My name is John N. Steadwell. I am a member of the Southern Classification Committee, with headquarters at 101 Marietta Street Building, Atlanta, Georgia.

Q. You are a member of the Southern Classification Committee, are you, Mr. Steadwell?

A. Yes, sir.

Q. Will you please state briefly your experience in classification matters.

[fol. 648] A. Well, I have been since March 1, 1918, attached exclusively to the Southern Classification Committee.

Q. Since when, please?

A. Since March 1, 1918. I was transferred to that committee from the Nashville, Chattanooga & St. Louis Railway, where I served a great many years, leaving there as general freight agent, in charge of rates and divisions. Back of that, I was assistant general freight agent; and back of that, chief clerk, chief rate clerk, and all-around man.

Q. For what purpose are you appearing in this proceeding?

A. I am here to file as exhibits, certain data called for by the Interstate Commerce Commission in connection with this proceeding.

Q. So far as the Southern Rail Lines are concerned, is this the data to which the Chairman referred yesterday?

A. One of the exhibits is, yes, sir; that is the exhibit indicating certain classification statistics, and changes in the classification, since June 1, 1940, up to date. By the way, I might say that I sent Mr. Koebel two copies of that exhibit about a month ago, at Washington, so that he would have a complete file.

Q. You say you sent copies of that particular exhibit to Mr. Koebel?

A. Yes.

[fol. 649] Q. That is Examiner Koebel of the Interstate Commerce Commission?

A. Yes, sir, through Mr. Cleveland's office.

Q. Now, Mr. Steadwell, is this data in the form of several statements, seven altogether, all of them having been bound together in consecutive order?

A. Yes, sir.

Q. Have you also prepared a brief explanatory statement, to be submitted in connection with the exhibits?

A. Yes.

Q. Were both the exhibits and the statement duly distributed to the parties here yesterday?

A. Yesterday morning.

Q. In accordance with the rule that has been adopted here?

A. Yes, sir.

Mr. Gwathmey: If the Commission please, we can have these various documents numbered collectively, as one exhibit, if the Commission prefers that way, but in view of the fact that I have in mind asking that this short

statement which has been prepared by Mr. Steadwell, be copied into the record, and since the statement contains reference to various exhibits, it might be well to give them separate numbers. There are seven all together.

Chairman Aitchison: All bound together?

Mr. Gwathmey: Yes, sir. If you prefer that they all [fol. 650] go in under one exhibit number, we will correct the statement so that it will synchronize.

Chairman Aitchison: Well, it is perfectly obvious that you do not intend to pay a bit of attention to our request with respect to the preparation of exhibits, so go ahead in your own way. We will have to get the facts in somehow.

Mr. Gwathmey: Very well.

Chairman Aitchison: If it is more convenient to do it that way, you may.

Mr. Gwathmey: What will be the next number please?

Chairman Aitchison: 38.

Mr. Gwathmey: Then I ask that the exhibits of Mr. Steadwell be numbered consecutively at this time, for identification, 38 to 44, both inclusive.

Mr. McCollester: Does that include the explanatory statement?

Mr. Gwathmey: Pardon me?

Mr. McCollester: I say, does that include the explanatory statements to which you have referred? Is that going in as an exhibit also?

Mr. Gwathmey: Why, if there is no objection, it will be agreeable, as far as the carriers are concerned, for the reporter to simply copy into the record the very brief explanatory statement which Mr. Steadwell has [fol. 651] prepared.

Chairman Aitchison: Before we get to that, let us get the exhibits identified with their proper numbers. Off the record.

(Discussion outside the record.)

Mr. Gwathmey: Now, if it is agreeable to the Commission that the statement which Mr. Steadwell has prepared, simply be copied into the record, that is agreeable to us; or shall the witness make it orally?

Chairman Aitchison: Is there any objection to that course?

Mr. McCollester: Why should it not be filed as an exhibit? We all have copies of it.

Mr. Gwathmey: It is very short.

Mr. McCollester: I know, but why we should we have to pay for it? Not that I have anything against the reporter, but unless there is some particular reason for having the witness read it into the record, it would seem to be an unnecessary expense, since we all have it.

Chairman Aitchison: If it is going to be filed, it ought to be marked as an exhibit.

Mr. Gwathmey: Then I will ask, sir, that the statement also be marked as an exhibit—No. 45 for identification.

(Exhibits 38 to 45, both inclusive, Witness Steadwell, [fol. 652] marked for identification.)

By Mr. Gwathmey:

Q. Now, Mr. Steadwell, were these exhibits, 38 to 45, both inclusive, for identification, prepared by you or under your direction?

A. The big one, which is No. 44, was written out by me, with my own hand. The others were prepared under my supervision and direction.

Q. And are the exhibits true and correct, to the best of your knowledge and belief?

A. Yes, sir.

Mr. Gwathmey: At this time, if the Commission please, we ask that the exhibits that have been identified by Mr. Steadwell, be received.

Chairman Aitchison: Is there any objection? (No response.) They are received.

(Exhibits 38 to 45, both inclusive, Witness Steadwell, received in evidence.)

Mr. Gwathmey: That is all.

Chairman Aitchison: Cross-examine.

Cross-examination.

By Mr. Cotterill:

Q. Mr. Steadwell, in your testimony, just received, wherein you speak of the value of commodities requiring less weight in your classification work, in that connection I wish to ask you this question: What is it that is prompt-

[fol. 653] ing you gentlemen in the direction of lessening the significance of the value of commodities in the weighting of elements for classification purposes?

A. Well, that has been in progress for quite a few years.

Q. I so understand.

A. The element of weight density is the element upon which the carriers get their charges.

Q. My question is, Mr. Steadwell, what is prompting you gentlemen in the direction in which you have been going, and evidently wish to continue?

A. Well, I do not know that there has been any prompting.

Mr. Cotterill: We have noticed, though, that it is increasingly becoming a fact that other transportation agencies have somewhat adopted the same plan.

Q. Do you have in mind motor carriers?

A. Yes.

Q. For the purpose of this question, Mr. Steadwell, would you kindly assume that the motor carrier industry does not exist, and, on the basis of that assumption, I will ask you if any condition in the nature of modern facts in the way of economics, has appealed to you gentlemen as a reason for departing from the traditional principle of distributing the transportation burden in accordance with relative ability to pay—leaving out all reference to the motor carrier industry for the moment.

A. I do not know that I quite catch the import of your [fol. 654] question, but if I understand it correctly, we do have regard to that, and we do have regard also to other elements besides weight density.

Q. I so understand, sir.

A. Yes.

Q. But are you not constantly modifying the influence of the value of commodities as an element of considerable weight in classification matters?

A. As I said in my previous statement, to some extent, yes.

Q. And why are you doing so, if there be any reason other than the existince of the motor carriers?

A. Well, the element of weight density has always been the most important, to my mind.

Q. I am sure, Mr. Steadwell, that you feel you have answered my question, but I have the impression that you

have not. You think, so far as your mind is concerned, and you always have thought, that weight density is the most important element.

A. To my mind.

Q. But the question that I am pressing now, Mr. Steadwell, is this: What are the considerations, if any, which are prompting the change, and the radical change, in the traditional distribution of the traffic burden in accordance with the tax principle of ability to pay, if there be any reason [fol. 655] therefor other than the existence of the motor carriers?

A. Well, in my opinion, to a very considerable extent at least, the motor carriers have brought that about.

Q. Would you then please inform the Commission in what way the motor carriers have brought it about?

A. By apparently disregarding, to a great extent at least, value as one of the elements, if not the dominant element, of classification.

Q. Do you mean that in their rate structure, they are different from yours?

A. That has been my understanding.

Q. Well now, Mr. Steadwell, Witness Crane told us a short while ago, I believe, that so far as Southern Territory is concerned, the rate structure of the motor carriers and the rate structure of the rail carriers are approximately the same.

A. Well, I could not say as to that. I do not know.

Q. I see. Well then, I will put my final question to you in this form, Mr. Steadwell, appealing to your own judgment individually: If the motor carrier industry itself is able to accomplish the restoration of the traditional principle of distributing the traffic burden with greater regard to ability to pay, as formerly prevailed, and went along with you gentlemen in your traditional view regarding that question, would you prefer that course, as a matter [fol. 656] of sound classification and ratemaking?

A. I still insist that to my mind, the weight density has always been the most controlling element, and value has been more or less a secondary consideration, or element, although also important, to my mind.

Q. Do you prefer the influence of commodity valuation in the future to be like that which is represented in your present classification, or like that which is represented in your present classification exceptions?

A. Well, I cannot speak about the exceptions, because I did not have any hand in making them.

Q. In so far as your classification is concerned, would it be your informed judgment that the weight attributed to the element of commodity valuation, as expressed in your present classification, is the proper weight to be given?

A. Well I might say right there that in our present Consolidated Classification, the element of value has to a great extent been modified in recent years in determining the ratings.

Q. And would you say, about sufficiently so, so far as your judgment carries you?

A. Well of course I cannot keep in mind all of the commodities.

Q. True; I grant that.

A. But I do know that, particularly in connection with [fol. 657] United States War Department materials, the element of value, which is tremendous, has almost disappeared.

Q. Do you have in mind, in that answer, Mr. Steadwell, commodities moving under Government bill of lading?

A. No, sir, commodities moving under commercial bill of lading, as well as Government bill of lading.

Mr. Cotterill: Thank you very kindly.

By Chairman Aitchison:

Q. We know four different kinds of value of service, Mr. Steadwell. Perhaps you can name more. What do you mean by "value of service"?

A. Well, in my own opinion, Mr. Chairman, the value of service, putting it in a bald way, is the element of being able to pay the burden of the transportation cost.

Q. Ability to pay the transportation burden on whose part; the consignor or the consignee?

A. Whoever pays the freight bill. Sometimes it would be the consignor, and sometimes it would be the consignee.

Q. And you do not take into account, then, as a part of the value of service, or as the value of service, what a substitute service can be obtained for?

A. I am very sorry, Mr. Commissioner, but I could not hear that question.

(Question read.)

A. Well, in the old days, Mr. Commissioner, we did, yes, but I do not think that is quite so much the case now;

[fol. 658] I do not think it is so very predominant these days. In the old days, we used to compare how much a man would have to pay, per bale of cotton, to get it to Nashville, and then we would meet that. . .

By Chairman Aitchison:

Q. No, that is not the question, Mr. Steadwell. That is not what I mean. What I mean by a substitute service, is a substitute for rail service.

A. That is what I mean, yes, sir. I mean that the rails, the railroads—take for example, the Nashville, Chattanooga & St. Louis. Where shipments were moving by wagon, we had to meet that. That was a substitute service, for the rail service.

Q. And you do not now take that into account?

A. Well, of course, we have had——

Q. I mean, in your testimony here?

A. No.

Q. That is what I am talking about.

A. No.

Q. When you were answering Mr. Cotterill about the value element, I wanted to find out just what you meant by the value element. As I understand it, you did not take that into account.

A. No.

Q. But you did take into account how much the man who paid the freight, could afford to pay?

[fol. 659] A. Yes.

Q. Well now, did you take into account the absolute or relative value of the commodity, either at point of origin or point of destination?

A. If I get your inquiry correctly, Mr. Chairman, it is: Do we take into account the value, the actual value, of a commodity?

Q. Yes.

A. Yes, sir.

Q. Well then, that is a second kind, is it not?

A. Yes.

Q. So you take into account how much a man can afford to pay, and also how much the goods are worth.

A. Yes.

Q. Well then, do you take into account how much more the goods are worth at one place, than at another?

A. No, sir. The rate is fixed usually upon the valuation of the shipper; he gives us the value, the weight, the character of the commodity, how it is packed, if it will carry safely in less than carload shipments with other commodities, and all of those various factors go into the determination of the rate.

Q. As a matter of history there used to be a time when those factors were all given some arithmetical content, and they were weighted; is that not the fact?

[fol. 660] A. I am very sorry, Mr. Chairman, but I did not get that.

(Question read.)

A. Well not in so far as the Southern Classification is concerned, no, sir. I believe that in the West, they did have some sort of scheme along that line, however, although I cannot give it to you in detail.

Q. Western Classification 51 Investigation brought that out, did it not?

A. Yes.

Q. But you have no such weighting?

A. No.

Chairman Aitchison: Is there further cross-examination?

Mr. Bee: Yes.

Chairman Aitchison: Mr. Bee.

By Mr. Bee:

Q. Mr. Steadwell, on page 7 of Part 2 of your testimony, or your exhibit, in the answers to the Commission, there is the following statement: "It is obvious, therefore, that uniformity with the Official Classification and uniformity with the Western Classification both, is not a practical thing." Birmingham, Alabama, and Springfield, Missouri, are both located on the St. Louis-San Francisco Railway, are they not?

A. I think so.

Q. Do you know of any reason why the same classification basis should not apply on a shipment from Birming-

[fol. 661] ham, Alabama to Springfield, Missouri, as contrasted with a shipment moving from Birmingham, Alabama, to Jacksonville, Florida, or Asheville, North Carolina?

A. Well, of course, when you talk about uniformity of classification, you are covering a very broad field. Perhaps some commodities in all three of the classifications, should be identical. That is true with respect to less than carload ratings, third-class and higher. But there is a Western Classification, there is a Southern Classification, and there is an Official Classification, and they have application in their own several territories.

Q. We know they operate in that manner, sir, and that is one of the things to which the purpose of this hearing is directed; but I am asking you now if you know of any reason why there should be uniformity of application, as far as the classification is concerned, from Birmingham, Alabama to Asheville, North Carolina, or to Jacksonville, Florida, but no uniformity of application from Birmingham, Alabama to Springfield, Missouri, both of which points are located, as you say, on the same line of railroad.

A. Well, the answer to that question would be, I cannot get into any rate discussion, because I am not authorized to discuss rates.

Q. No, I am not asking you that.

A. Well, there is your point right there, that you could [fol. 662] not have complete uniformity, without having uniformity in other respects.

Q. Do you mean by that, Mr. Steadwell, that you cannot have a uniform classification without uniform ratings?

A. Without what?

Q. I mean, uniform rates.

A. Why, you have got to have some sort of coordinated rate schedule, I would assume.

Q. Well then, when the Interstate Commerce Commission changed the form of the rates from Official Territory to the Southwest, did you change all of the classifications?

A. No.

Q. Why not? You had to have some relationship. Why did you not go and change them all?

A. Well, we did not.

Q. And I say, why not?

A. Well, I do not see any connection between the two.

Q. But you said you had to have some uniformity, did you not?

A. Uniformity between class rates——

Chairman Aitchison: Just a moment. The witness has answered the question. He said he did not see any connection between the two.

Mr. Bee: All right.

By Mr. Bee:

Q. Now, Mr. Steadwell, do you know of any more reason [fol. 663] why there should be uniformity of class ratings between Cincinnati, Ohio, on the one hand, and Boston, Massachusetts on the other hand, and the lack of such uniformity of ratings between Cincinnati, Ohio, on the one hand, and Jefferson City, Missouri, on the other hand.

A. Well I think my previous response, my previous answer rather answers that question also.

Q. What do you mean, that you just pull out a territory, and draw a line around it?

A. No. We do not pull anything out.

Q. Well, who did?

A. Well, it has been there for 75 or 80 years.

Q. And you are just going to follow precedent; is that it?

A. What?

Q. You are just going to follow precedent, and that is all; is that it?

A. Follow precedent?

Q. Yes. You say that somebody else drew the line, as a precedent, and the line having been drawn, you are just going to follow it; is that correct?

A. Well, you can interpret it that way, if you want to.

Mr. Bee: That is all.

By Chairman Aitchison:

Q. Mr. Steadwell, I asked a question this morning of Mr. Boyle with respect to whether the attitude of the Southern carriers had always been the same with respect [fol. 664] to uniformity of classification. Do you happen to know?

A. I am very sorry, Mr. Chairman, but I was not able to hear your question.

(Question read.)

A. My answer to that question, Mr. Chairman, is this, that taking the Consolidated Classification——

Q. No. Wait a minute, now. You either know, or you do not know, whether the attitude of the Southern carriers has

always been the same with respect to uniformity of classification. I am simply asking you if you happen to know.

A. Well I do not think that I can answer your question definitely, Mr. Chairman. We have done this, however, I might add: We have tried, as far as we can——

Q. I was under the impression that at one time a uniform classification was virtually agreed upon by all of the lines except those in one particular territory.

A. Well I was a member of the Uniform Classification Committee, Mr. Chairman, during 1910, and it was found impracticable in that classification to unify the ratings. They did, however, unify the descriptions of packing specifications, minimum weights and rules. That is the way it stands today, except that there has been a great deal of unification in the ratings themselves since those days.

[fol. 665] Q. In 1910, did you say?

A. Yes. That is when I was on the Committee.

Q. Did that not come during Federal Control?

A. Oh, I see what you mean. Yes. That was throwing the three books together.

Q. Now, that is when we got uniformity in ratings, and so forth, when the three books went together; is that not correct?

A. Well, there was not much uniformity until they threw the three books together; but I am going back, now, to 1910, having in mind the matter of unifying the descriptions, ratings, minimum weights and rules. They were brought into the three books, and consolidated; but the part of the work that I am talking about was going on when I was on the Uniform Classification Committee, back in 1910; and the books were thrown together, as I remember it, on December 30th, 1919,—I believe that was the date. Let me see. Yes, December 30, 1919, under the United States Railroad Administration. That was the Consolidated Classification proceeding, Docket 10204.

Q. You do not remember, then, whether the rail carriers ever got together, with that exception, do you,—I mean, got together far enough to actually put out a uniform classification for consideration, and that it was rejected by certain lines in one particular section?

[fol. 666] A. I do not recall that.

Chairman Aitchison: Is there any further cross-examination? (No response.) Have you anything further, Mr. Gwathmey?

Mr. Gwathmey: Nothing.

Chairman Aitchison: You are excused.

The Witness: Thank you.

(Witness excused.)

Mr. Gwathmey: If the Chairman please, in response to the Commission's notice of hearing, the Southern Rail Carriers have now put in all of the data which they have prepared in the way of rebuttal of the testimony which was given by Dr. Edwards and the other Government witnesses at the St. Louis hearing, except, I am sorry to say, that we still have one witness who will testify briefly about the Florida situation, who was unable to get here until this morning. He is not ready to go on at this time, and I hope that we may be allowed a few minutes after the Western Lines have completed the presentation of their case, in which to examine this witness. The Southern Lines are not prepared at this time to offer any rebuttal to the testimony which has been presented at this hearing by Dr. Edwards and the other Government witnesses.

Mr. Healy: Mr. Chairman.

Chairman Aitchison: Mr. Healy.

[fol. 667] Mr. Healy: At this time I will call Mr. Hawkes to the stand.

N. W. Hawkes was sworn and testified as follows:

Direct examination.

By Mr. Healy:

Q. Mr. Hawkes, please give your full name and address to the reporter.

A. N. W. Hawkes, address, New York City.

Q. What is your position with the Eastern Railroads?

A. Vice-chairman of the Trunk Line Association and Traffic Executive Association, Eastern Territory.

Q. What experience have you had in dealing with traffic matters?

A. Well, I have been in the railroad business since 1900, occupying various positions in the Rate Departments and in a supervisory capacity with the Grand Trunk Railway, and

the Central Vermont Railway, at St. Albans; chairman of the New England Freight Association, 1920 to 1924; New England Traffic Manager of the Grand Trunk Railway; system freight traffic manager of the Canadian National Railway; vice president of the Boston & Maine Railroad; and member of the Official Classification Committee. From 1933 on, I have been with the Trunk Line Association, as chairman of the General Freight Committee, and then of the Freight Traffic Managers Committee.

[fol. 668] Q. Have you prepared an exhibit for use in this case?

A. I have.

Q. Will you please identify it at this time. Of how many pages does the exhibit consist?

A. Four sheets.

Q. Is the first sheet of the exhibit headed "Revenue Freight Originated in United States for the year of 1941."?

A. Yes.

Mr. Healy: May the exhibit be marked for identification, if the Commission please, as Exhibit 46.

(Exhibit No. 46, Witness Hawkes, marked for identification.)

Mr. Healy: Now, if the Commission please, the witness has a prepared statement, and in accordance with the rules of practice, that statement has been distributed to the parties. I ask permission that the witness be allowed to read it into the record at this time.

Chairman Aitchison: Proceed.

By Mr. Healy:

Q. Proceed with your statement, please.

A. Shall I read it?

Q. Yes, in accordance with the permission of the Commission.

Mr. McCollester: Mr. Chairman, I do not want to interfere with the method of presentation which the railroads desire to follow, but since we have had in our possession for some time the statement of Mr. Hawkes, I make the suggestion, [fol. 669] to save time, that it be handled as an exhibit, rather than having it read into the record.

Mr. Healy: In this case, if the Commission please, I would like to have the statement made a part of the stenographic transcript, rather than merely going in as an exhibit. I think it belongs in the transcript.

Mr. McCollester: Well then, if counsel wants it to go into the record, I would be perfectly agreeable to having the reporter simply copy it in, to save time.

Mr. Healy: That is agreeable to me also, if that is agreeable to the Commission.

Chairman Aitchison: Is there any objection to that course?

Mr. Norman: Will the witness be available for cross-examination, if that is desired?

Mr. Healy: Yes.

Mr. Norman: I take it he will be excused from the stand at this time.

Mr. Healy: He will be available.

Mr. Norman: All right.

Chairman Aitchison: Then Mr. Hawkes statement, Mr. Reporter, may be copied into the record. (The statement is as follows:

I have been chosen to state the position of the Official Territory Lines with respect to the issues raised by the [fol. 670] Commission's investigation. I will deal, in part, with three principal subjects. First, the rates within Official Classification Territory; second, the rates between that territory and other territories, and third, the suggestions submitted by Mr. Jensen in his testimony and in his Exhibit No. 7 with respect to improvements in railroad class rates.

I. Rates within Official Classification Territory. The boundaries of Official Territory are set forth in the Commission's decision in the Eastern Class Rate Investigation, 164 I. C. C. 314, at page 322. It has three subdivisions, New England, Trunk Line and Central territories. The extent of these territories is quite generally known. Briefly, New England Territory embraces the six New England States and a small portion of New York State, East of the Hudson River. Trunk Line Territory includes the States of New York, New Jersey, Pennsylvania, Maryland, West Virginia, Delaware and the District of Columbia, and that part of the State of Virginia on and north of the Virginian Railway. Those portions of the States of New York, Pennsylvania and West Virginia which are west of a line drawn from Buffalo

through Pittsburgh, Pennsylvania, Parkersburg, West Virginia, and Charleston, West Virginia, are in Central Territory. Central Territory includes the portions of New York, Pennsylvania and West Virginia, just described, and the [fol. 671] states of Ohio, Indiana, Illinois, the lower peninsula of Michigan and a portion of Wisconsin adjacent to the west bank Lake Michigan ports. The history and nature of the rate structures in effect in Official Territory and its three sub-divisions prior to the effective date of the rates prescribed by the Commission in the Eastern Class Rate Case, that is, December 3, 1931, are set forth fully in the Commission's report in that case and no purpose would be served in repeating it now. As the Commission stated in its report, the rate structures within the three divisions of Official Territory and between the three divisions had grown up independently of each other and, for the most part, had little resemblance to each other. The Commission had previously dealt with rates in Central and New England Territories. The investigation which resulted in the Eastern Class Rate Case was instituted upon a petition of a joint committee of shippers and carriers that had been studying the problem for some time. The investigation was actually instituted on May 13, 1924. The principal report in the case was dated May 13, 1930. As stated, the rates became effective December 3, 1931. The rate structure which then became effective bore little or no resemblance to the rate structures which were superseded. The Western Trunk Line Class Rate was decided on the same day as was the Eastern [fol. 672] Class Rate Case. The Southwestern and Southern Cases had already been decided. While the reports of the Commission in these cases indicate that in prescribing these structures the Commission was guided by various considerations, such as the preservation of the carriers' revenuers, reluctance to unduly disrupt long-standing commercial relationships, and others, I think it can be truthfully said that the outstanding principle followed by the Commission was that the use of mileage scales and key-rate adjustments, which reflect distances, should be the controlling factor in prescribing class rates, particularly to remove the many discriminations which were inherent in the old rate structures.

Following the establishment of rates prescribed by the Commission in the Eastern Class Rate Case the carriers

then were faced with the tremendous task of revising commodity rates. These rates have been extensively revised in order to adapt them to the class rate pattern and to meet the requirements of the Fourth Section of the Act. This revision, as well as the class rate revision itself, has entailed a tremendous amount of labor, not only on the part of the carriers, but on the part of the interested shippers. The work necessarily has been laborious because it is essential that in adjusting the rates so that they would fit in with the new class rate pattern, as well as meet the Fourth [fol. 673] Section requirements, they also meet the commercial necessities of the shippers who actually use the rates. The Official Territory carriers feel that as a result of at least twenty years labor a rate structure has been evolved which, to the best of their knowledge, not only meets the necessities of their shippers but, above all, has removed discriminations. Certainly they have received no complaints of discrimination and no one has appeared at these hearings complaining of any unlawful discriminations existing in our basic rate structure at the present time. Having achieved such results at the expense of so much labor on the part of the carriers and shippers, frankly we shrink from suggestions such as those contained in Mr. Jensen's exhibit that we now embark upon a new and radical change in the rates, as well as in the classification. Only upon the most compelling showing of unlawfulness in our present rate structure should we and the shippers be forced to undertake such a task.

I have spoken of the Commission's reluctance, when it was prescribing the existing rate structures, to unduly disturb long-standing commercial relationships. This consideration should be accepted by the Commission as paramount under the existing circumstances. The eastern structures, both class and commodity, as I have said, are the result of years of painstaking labor by both shippers and [fol. 674] carriers, as well as the Commission. They have been designed to and, we believe, actually do meet the necessities of our shippers who have been operating under the class rates for nearly eleven years and under the revised commodity rates for varying periods since the class rates became effective. Other witnesses will have exhibits illustrating the change in relationship as between shippers which will be brought about should a rate structure such as

that proposed by Mr. Jensen be adopted. Not being advised of any complaints as to the unlawfulness of our existing rate structure, one may ask—has it functioned in the face of the great increase in truck and water competition, more particularly the very substantial increase in truck competition?

In our judgment the structure has functioned exceedingly well; certainly it has succeeded as well as could be expected of any general rate structure covering a large territory. So far as less-than-carload traffic is concerned, of course, the truck competition has been met to a large extent by the establishment of pick-up and delivery service without extra charge. On carload traffic the situation has been met in a few instances by reductions in the classification, in others by exceptions to the classification, and in still others by specific commodity rates. Truck competition, [fol. 675] as the Commission so well knows, is so particularized that it can only be met by dealing with specific situations. Service, particularly for the shorter hauls, in many instances is the determining factor. For the most part truck competition cannot be met by territory-wide adjustments of rates without unduly sacrificing the carriers' revenues. I repeat that on the whole, particularly following the establishment of pick-up and delivery service, eastern traffic officers feel that the present structure has functioned as well as any general rate structure could function in meeting truck competition. Furthermore, it has functioned very well under present wartime conditions. Within its structure we have been able to establish whatever rates were needed to move materials to meet all the unusual conditions brought about by the war. But the basic structure still stands; it moves a vast amount of traffic; it has become an integral part of the commercial and transportation interests of the Eastern Territory; and it should not lightly be discarded for some untried method of making rates.

II. Rates between Official Classification Territory and other Territories. I come now to the interterritorial rates. Prior to these general class rate investigations the rates to and from Official Territory and from and to the other major rate territories were generally made on combinations. True, there were very important exceptions [fol. 676] to this general statement. I have in mind particularly the fact that there were joint rates from Trunk

Line Territory to the South and that there were some joint rates from Central Territory to the Southwest. But I think it is accurate to say that prior to these general cases, instituted by the Commission following Federal control, a greater part of the traffic between Official Territory and other territories moved on rates which were actual combinations or were based on combinations. In other words, the carriers in each territory made the rates which they thought were proper and the traffic moved between the territories at the sums of such rates. Under such a system of rate-making each territory developed its own rate structure. It so happened, as everyone knows, that the structure developed in the East was very different from that developed in the West and in the South. The Commission in many cases has pointed out the differences in the several structures. Mr. Jensen has also done so. While the rate structures prescribed by the Commission in each of these major rate territories differ very substantially and in some respects radically from those existing prior to the investigations instituted by the Commission, yet the eastern structure still differs materially from those prescribed by the Commission for the South and West. It seems to us that the difficulty with respect to the interterri- [fol. 677] torial rates has arisen in large part because of the establishment of one-factor rates between these three territories. As long as the southern and western structures differ from the eastern structure there will be difficulty in prescribing rates between the South and the North and between the West and the East. The Commission has recognized this and has so stated in its reports. In its supplemental report in the Southern Class Rate Investigation, 109 I. C. C. 300. The Commission said:

"It is not too much to say that so long as they exist (Differences in the Southern and Eastern rate structures), and they cannot be eliminated in this proceeding, no basis or bases of interterritorial class rates can be devised which will be free from objectionable features."

Curiously, the southern shippers in that proceeding opposed the interterritorial rates prescribed in the first report of the Commission on the ground that they would give northern manufacturers an undue advantage in sending goods to southern destinations. With the present rates in the three territories we know of no better way of de-

veloping one-factor interterritorial rates than the system devised by the Commission. If the rate structures within the West or within the South are changed, we, of course, would have views as to what the interterritorial rates should be. But we are not in a position to express any [fol. 678] views in the absence of knowledge of any changes in those structures.

In dealing with these interterritorial rates, we cannot overlook the fact that, relatively speaking, there has been little complaint about them from shippers. On the whole, the eastern carriers, in cooperation with the carriers operating in other groups, have published rates or participated in rates necessary to meet the necessities of the shippers. Each situation has been dealt with on its merits. Where that has not met with the approval of the shipping interests they have brought complaints before the Commission. The Commission, itself, in treating various commodities, has not followed any particular rule but has dealt with each commodity on its individual merits. Finally, we think it very significant that in the Southern Governors Case, which started out to be very broad in scope, the rates of relatively few commodities were actually brought in issue. Complaints as to some of these were dismissed by the Commission and readjustments were required as to others. I think we can fairly say that we are not advised of a serious complaint on the part of any shipper as to alleged unlawfulness of the interterritorial rates which are actually moving the traffic; neither are we advised of complaints by shippers as to the levels of interterritorial rates which might be said to prevent the flow of traffic between the Eastern Territory and other terri- [fol. 679] tories.

The eastern lines have more at stake with respect to this interterritorial traffic than any other group of carriers. The Commission has prescribed divisions between the East and the South and Southwest following the failure of the carriers to agree on divisions of the rates which the Commission prescribed. With respect to the Western Trunk Line rates most of the western carriers have agreed with the eastern carriers as to divisions and they are now in effect. Six Western carriers have failed to agree and their divisions are now the subject of proceedings before the Commission. The divisions accorded the Southwestern and Southern carriers by the Commission in the view of

the Eastern carriers are unduly generous to those carriers and seem to be based in part on the differences in the class rate levels, as well as alleged financial necessities of the carriers in the respective groups. If the differences in class rate levels are narrowed or eliminated, certainly the eastern carriers cannot be expected to make good any losses in revenues which the other groups of carriers may sustain, either through a reduction in the rates within their respective territories, or through reduction in the interterritorial rates. If interterritorial rates are prescribed approximating the eastern level, it should not be done upon any supposition that eastern lines should re- [fol. 680] ceive therefrom any less revenues than would accrue to them under the principle embodied in Finding 3 of the Commission's decision of July 25, 1939, in the Southern Divisions Case. This is commonly known as the equal factor rule.

The making of interterritorial rates on the eastern level would obviously result, not only in a great reduction of carriers' revenues on traffic moving between the territories, but would profoundly affect the rate structures within the South and West. This leads inevitably to the conclusion that this interterritorial rate problem cannot be solved by merely placing interterritorial rates on the so-called destination level. A better system of making one-factor through rates than that now in effect cannot be devised unless the Commission, as well as the interests in the respective territories, recognize the fact that before the interterritorial rate problem can be solved to their satisfaction the entire rate structures within Southern and Western Territories must be revamped along the lines of the Eastern rate structure. In dealing with the broad question of whether one territory is being unduly preferred in the matter of freight rates as against another territory, the entire rate level borne by the shippers in each territory must be considered. Grave injustice will be done if only interterritorial rates are considered in this case without considering the entire body [fol. 681] of rates which the shippers in each territory must bear. The eastern carriers have a further interest in this problem. They think that whatever class rates are prescribed from the South and the West to Official Territory should apply in the reverse direction. We know of

no transportation conditions which warrant a higher level of class rates in one direction than in the other.

III. Comments on Mr. Jensen's Testimony and Exhibit No. 7. I desire to make one more general statement with respect to the position of the eastern lines before proceeding with a discussion of Mr. Jensen's suggestions. That has to do with the making of rates based upon cost of service. We ask that, if the Commission makes any change in the rate structure as a result of this proceeding, it prescribe maximum reasonable rates, leaving the carriers free, as they have been in the past, to adjust such rates to meet the necessities of the shippers as well as to meet competitive situations. We see no reason for prescribing precise rates, or minimum rates, based upon costs. In making rates under the stress of conditions which the carriers now face and which will undoubtedly be intensified after the war, the carriers should not be handicapped by the prescription of rates based solely upon the costs of service with no consideration being given to other elements which have always entered into rate making, particularly [fol. 682] the value of the service to the shipper.

The spirit of the Hoch-Smith Resolution seems to be contrary to the establishment of rates solely on the basis of costs because certainly rates can not be made in accordance with the provisions of that Resolution without resulting in the distribution of the transportation burden so that some kinds of freight under just and reasonable rates will earn materially less for the rail carriers than will other rates. This view was confirmed by the Commission in the Western Trunk Line Case, see 164 I. C. C. 189. That has always been true to a greater or less degree and certainly no conditions at the present time or anything that we can foresee in the future will operate to change that fundamental principle. After all, our rate structures have been and undoubtedly will continue to be shaped to a large extent by economic and other forces beyond the control of the carriers. In its notices of January 9, and September 25, 1940, the Commission indicated its desire that the respondents discuss certain questions. Inasmuch as Mr. Jensen's testimony and exhibit cover, in a general way, substantially the same points mentioned in those notices, our discussion of Mr. Jensen's evidence will serve as our response to the wishes of the Commission.

At the outset, I might state that we are somewhat in doubt as to the scope of Mr. Jensen's proposal; that is, [fol. 683] as to how much traffic it is intended to cover. While in many respects his suggestions seem to run only to normal class rate traffic, yet his conception of normal class rate traffic seems much broader than the conception which the carriers have generally held. For instance, we have never considered sand and gravel, and commodities of that character, as class rate traffic, but, from a footnote on page 10 of Exhibit 7, one would gather the impression that Mr. Jensen does. This footnote reads:

"The term 'class traffic' as here used refers to all traffic for which distance rates are appropriate, whether the distance progression conforms to that of the class-rate scale or not."

It is not thought necessary that we deal with all details of Mr. Jensen's proposals, but we do wish to discuss some of the more important objections, as we view them, to the adoption of his proposals. Needless to say, the structure which he suggests differs radically from those prescribed by the Commission within the East and between the East and other territories. In addition, it contemplates a complete change in our classification. Throughout the document Mr. Jensen emphasizes that the carriers' revenues in any section should not be diminished and, furthermore, that no readjustment should be made which would have the effect of sharply changing the rate level on any particular commodity or form of traffic. For [fol. 684] instance, at pages 55 and 56 of Exhibit No. 7, he says:

"No readjustment of class rates should be required which would diminish the aggregate revenues of the railroads in any section because nowhere are they earning as much on their investment as they have a lawful right to do. Neither should a readjustment be made which would have the effect of sharply changing the rate level on any particular commodity or form of traffic."

These statements seem to be contradictory. His proposals would result in very substantial reductions in short-haul rates, accompanied by an increase in the long-haul rates. One of the principal criticisms of the existing rate structures is that the rates for the short hauls are too high and that the rates for the long-hauls are lower than need be. Placing emphasis on the density of load-

ing as against the value of service, as he does, results in a very substantial increase in the rate level on light-loading commodities, such as many of the agricultural products, accompanied by substantial reductions in the rates on heavier loading commodities. We do not know what Mr. Jensen might consider "a sharp change in the rate level," but practically all of his proposals would result certainly in what most shippers and traffic officers would consider substantial changes in the rate levels on [fol. 685] many commodities and groups of commodities, unaccompanied, unfortunately, by any assurance that the adoption of such a radical change in the rate levels would preserve the carriers' revenues. I will deal now with some of the specific objections which occur to us.

First: Mr. Jensen admits that the change-over could not be accomplished except in a piecemeal fashion. On page 82 of Exhibit 7 he makes this statement:

"Therefore in order to permit the work to go forward in an orderly way, the transfer on traffic from the old to the new scales should be effected gradually, by groups of commodities, and complete cancellation of the present class-rate scales should be deferred until the process had been completed."

This means the maintenance, for a protracted period, of two sets of tariffs where one now exists, some commodities or groups of articles being subject to the new tariffs, others being subject to the old tariffs. At the same time the classification ratings would have to be changed in such a way as to insure the preservation of the carriers' revenues. We have had a very unsatisfactory experience with a dual system of rates. We have in mind the maintenance for a number of years subsequent to the Commission's decision in the Eastern Class Rate Case of the alternative application of rates under Finding 12 of the [fol. 686] Commission's decision with respect to the rates on fresh domestic fruits and vegetables and hay. It will be recalled that under this finding where the new class rates meant lower rates on these commodities such rates were to be applied; where the new class rates would result in higher rates the old rates were to be maintained. The Commission had this subject before it in I. & S. Docket No. 4392 and issued two reports, the first 227 I. C. C. 210 and the second 232 I. C. C. 701. The intolerable rate situation was depicted at length by the Commission in these reports

and it finally relieved the carriers of the necessity of maintaining the dual basis. Exhibits presented by the carriers in that proceeding showed that in order to maintain the alternative bases of rates required by the Commission's Finding 12 there were over 10,000 effective supplements alone in Trunk Line Teritory at the time of the first hearing in 1938. The original tariffs aggregated nearly 40,000 printed pages, the effective supplements over 30,000 printed pages, or nearly 70,000 printed pages of tariff material, much of which was then over 12 years old. With that most unsatisfactory experience behind us, we see no way to make Mr. Jensen's proposals effective except through a prolonged state of chaotic and intolerable disturbances in the transportation industry similar to the one resulting from Finding 12, but on a much more ex- [fol. 687] tensive scale. When the necessity for the new rates occurs, as it repeatedly will under the stress of post-war conditions, not to speak of present war conditions, the question will arise as to which basis of rates is to be used as the foundation. It is not sufficient to say that much trouble will be avoided if the carriers treat the situation commodity by commodity because, as the Commission well knows, there is in many instances the most powerful competition between producers and shippers of different commodities who are nevertheless competing in common markets. Aside from the above, a most discouraging feature of the proposal is that when this transition from the present structure to the new one has been accomplished the carriers and shipping interests will still find themselves operating under a temporary structure for, as Mr. Jensen states on page 92 of his exhibit—

"Nothing more can be accomplished at present, and nothing more should be attempted than to bring the class rates in the several territories into better relation with each other. They cannot be made altogether right, because the resulting dislocation of markets for many industries would be too severe; they can only be made better. Only when the rates are made right—and a further revision with a view to making them so should surely be undertaken within the next five or ten years—will it be possible [fol. 688] to unify the classifications throughout the country, and then will be the time to consider how many classes should be comprised in the unified classification and how those classes should be related to each other."

No rate structure can be static, but there is no good reason to compel shippers and carriers to do business under rate structures which will be subject to radical revisions for an indefinite period. Incidentally, the method of constructing rates advocated by Mr. Jensen is extremely cumbersome and would require a tremendous amount of clerical and mechanical labor in order to calculate the rates and prepare the tariffs. If anything, it would be more burdensome than the formula prescribed by the Commission for the construction of inter-zone rates in the Vegetable Oil Case, 188 I. C. C. 605. Upon reconsideration of that Case, the Commission in 203 I. C. C. 177 struck out its original Formula.

Second: The proposals criticise the emphasis which the carriers and the Commission have placed upon the element of value in making rates. Mr. Jensen would shift the emphasis to density of loading. We feel that the value of service should continue to be given great weight in the construction of rates. The Commission has followed this principle in many cases. There is a particularly pertinent discussion of the subject in Fertilizer between [fol. 689] Southern Points, 113 I. C. C. at page 420. As we see it, the Commission must give consideration to it under the terms of the Hoch-Smith Resolution. The adoption of Mr. Jensen's proposals would, on much traffic, run directly contrary to the mandate of that Resolution. Under his proposal commodities which, on account of their physical characteristics, are among the lighter loading commodities would pay a higher proportion of the total transportation charges than they do now. There can be no doubt that the adoption of his proposals would result in a very substantial change in the present distribution of the transportation burden.

We have prepared an exhibit, which has been identified as Exhibit No. 46, which on page 1 shows for the year 1941 the number of carloads and number of tons of the reported commodities. We have converted the figures into the number of tons per car and find that three of the six commodities, averaging less than ten tons per car, are farm products, namely, hogs, single deck; sheep and goats, single deck; and live poultry. We also find that twenty-five commodities, of the twenty-nine in the ten to fifteen ton range, are in the agricultural list.

Third: We think that it would be a very serious mistake to divide Official Territory with respect to class rate levels. Mr. Jensen suggests a lower level in Central Territory, the boundaries of which are to be changed, than [fol. 690] that in Trunk Line and New England Territories. Little or no support is advanced by Mr. Jensen for this proposal. The issue of whether there should be one rate level or different rate levels in the various parts of Official Territory was one of the most exhaustively considered subjects dealt with by the Commission in the Eastern Class Rate Case. It prescribed one rate level for Central and Trunk Line Territories. The carriers and the shipping interest accepted that determination as final; have adjusted themselves to it; and have followed it in commodity rate revisions. Furthermore, generally speaking, we know of no one except Mr. Jensen who advocates a reversal of the Commission's finding. There is no substantial difference in the intensity of truck competition within the two territories. Finally, as recognized by the Commission in the Eastern Class Rate Case, the maintenance of different levels of class rates in Central and Trunk Line Territories would simply complicate an already difficult problem with respect to the prescription of interterritorial rates.

Fourth: Exhibit No. 7, pages 69 to 81, deals with the proposal for reducing rates for the shorter hauls and increasing rates for the longer hauls. It seems very doubtful whether a substantial reduction in the short haul rates would increase to any great extent the less-than-carload traffic handled by the carriers over and above [fol. 691] that which they are now handling. It is becoming more difficult to draw a line as to the limits of effective truck competition. But we do know that, certainly within 250 miles or more, the element of service which in many cases is superior to that which the railroads can give, door to door, is the determining factor as to the choice of transportation agency by the shippers. Mere rate reductions would not insure the return of that class of traffic.

On the other hand, a substantial increase in long-haul rates, coupled with a substantial reduction in short-haul rates, would have, in our opinion, the distinct tendency of drying up the long-haul traffic by bringing about further decentralization of distribution centers which has been in

progress for quite a few years, particularly since 1920. It must not be overlooked that within relatively short hauls, and in many cases for long hauls, the truck competition which the carriers must meet is not entirely with common carriers but with contract carriers and private carriers. In the final analysis all common and contract carriers must meet the competition of the costs at which the shipper can conduct his own trucking or water operations. The truck competition which we now meet in Official Territory is of many types covering, among other things, the following:

[fol. 692] First: Spot movements of high-grade merchandise traffic where the competition is largely felt between points of greatest population:

Second: On specific manufactured products from the mill or factory to large distributing centers;

Third: In the movement of raw products for short hauls:

Fourth: The contract carrier who selects the type of traffic that he desires to handle and whose competition is felt largely in the rail carload field:

Fifth: And last, but not least, the private trucker who will handle his own goods, in his own trucks unless the common carrier offers rates comparable to his costs.

Private carriers, which are not subject to regulation comparable to the common and contract carriers, have proven to be a major factor of disturbance in breaking down the level of rail rates. They operate under conditions which permit the closest coordination to suit the convenience of industry and can force the contract carrier down to a level often below cost of operation. Industry too frequently does not concern itself with more than getting its tonnage moved with the lowest possible cost to itself. This kind of competition has forced reductions in rail rates below a reasonable maximum level. So long as the private carrier is permitted to use the highway under the existing conditions, the rail carriers will be required from time to time [fol. 693] to meet depressed rates or be deprived of important tonnage, which in normal times they can ill afford to lose.

The rail carriers have constantly been engaged in adjusting their rates and ratings to meet competitive con-

ditions. This has largely been accomplished by reductions in ratings where the competition of trucks is general throughout the territory and not limited to short hauls. Where competition is confined to specific hauls and to specific commodities the rails have in many cases not hesitated to establish point to point commodity rates bearing no percentage relationship to first class rates.

A valid criticism applicable to Mr. Jensen's proposed method of making class rates was stated by the Commission in the Western Trunk Line Class Rate Case at page 190 when dealing with the question of making class rate scales providing for constant progression. The Commission stated that one likely effect of a scale of this character would be to discourage the movement by rail of much class rate traffic in contravention of that clause of the Hoch-Smith Resolution which specifically provides that freight rates shall be so adjusted that traffic would move freely. We think that the observation made by the Commission in that case is as true today as it was at that time, namely, that the customary plan of constructing rate scales appears on the whole to have served well the needs of the country's [fol. 694] commerce. While competing forms of transportation have forced changes in our rate structure it would seem appropriate at this time to review a study made of less-than-carload tonnage in Official Classification Territory for the week September 8 to 14, 1939, and we now refer to page 2 of Exhibit 46.

This page of the exhibit is an analysis of less-than-carload traffic originating and terminating within Official Classification Territory for the period September 8 to September 14, both inclusive, of the year 1939, separated as between shipments less than 10,000 pounds and those of 10,000 pounds and higher.

It indicates that for the week in question, which is the last available period for which such statistics are available, there were 240,123,458 pounds of less-than-carload shipments less than 10,000 pounds, producing $1,710,933. Arbitrarily equating this into a year's business by multiplying the figures for this single week by 52 gives a figure of over 12,486,000 pounds of this type of less-than-carload freight yielding approximately $89,000,000. It also indicates that for the same week there were 22,299,960 pounds of less-than-carload shipments 10,000 pounds and higher

producing $103,075. Arbitrarily equating this into a year's business by multiplying the figures for this single week by 52 gives a figure of 1,159,597,920 pounds of this type of less-
[fol. 695] than-carload freight yielding approximately $5,307,000. The total of all less-than-carload shipments weighing both less than 10,000 pounds and 10,000 pounds or over, on the equated basis of a year's traffic products over 13,500,000,000 pounds and $94,000,000. In 1939 Eastern lines, including the Pocahontas Lines, originated 7,733,652 tons of less carload freight. Their revenue on this class of traffic was $115,497,511. In 1941 the respective figures were 10,110,190 tons and $150,263,282. These figures are taken from the Commission's Freight Commodity Statistics Statement 42100 and include only less carload shipments weighing less than 10,000 pounds.

It is difficult to say just when a truck-short-haul ends and a truck-long-haul begins. If we are to consider a long haul to be between 200 and 300 miles for motor carriers, then there are literally hundreds of motor carriers operating within this zone and carrying substantial tonnages, but assuming that a motor truck long haul begins at 300 miles and using Trunk Line Territory, as illustrative, there are numerous motor carriers which operate for distances over 300 miles. An examination of Middle Atlantic States Motor Carrier Conference tariffs MF-I. C. C. A-72 and MF-I. C. C. A-5 reveals that there are many commodity rates between eastern points and points in Western Pennsylvania, Western New York or in West Virginia for distances ranging
[fol. 696] from 300 to 500 miles. It is presumed that traffic is actually being handled under these commodity rates, but to indicate that substantial tonnage is actually moving via some of these motor carriers, who are generally recognized as long-haul carriers, I refer herewith to page 3 of Exhibit No. 46, a statement of Class 1 Motor Carriers, taken from reports of the Transport Research, Inc., Washington, D. C.

Coming now to the interzone situation, that is, between Trunk Line-New England Territories, and Central Freight Association Territory, covering what might be described as hauls over 500 miles, attention is called to Agent M. F. Russell's MF-I. C. C. No. A-1, publishing numerous commodity rates between points in Trunk Line-New England Territories and points in Central Freight Association Ter-

ritory. It is to be presumed that traffic moves under these rates. Further, to indicate that this long haul motor competition is actually with us, attention is called to I. & S. Docket M-1216, Rugs and Matting from the East to Western Trunk Line Territory, and I. & S. Docket M-1445, Linoleum and Related Articles, from the East to Ohio, I. & S. Docket M-1824, Alcoholic Liquors and Wines in Official Territory, and Docket MC-C-309, Liquors and Wines within and between Official and Western Trunk Line Territories. As indicative of the tonnage handled by the long haul [fol. 697] motor carriers, I again refer to page 3 of Exhibit 46, quoting from the Report of Transport Research, Inc., Washington, D. C., showing the tonnages transported by several Class 1 motor carriers operating between Trunk Line-New England Territories and Central Freight Association Territory. In Transport Topics for July 6, 1942, there is published information said to be based on test period from May 3 to May 9, 1942, showing that for 50 carriers reporting in Central Territory, 48 per cent of the tons moved over 300 miles, and in Mid-Atlantic and New England Territories 39.9 per cent moved over 300 miles. Our conclusion is that Mr. Jensen's proposal in this respect would tend to dry up or divert our more profitable long-haul traffic without any assurance that we would be able to secure enough short-haul traffic to compensate us for the loss in long-haul traffic.

On page 99 Mr. Jensen states that the question has been raised as to whether less-than-carload traffic should not be subject to class rate scales wholly separate from those for carload traffic. This question was discussed at some length by the Commission in the Western Trunk Line Case when such a proposal was suggested by some of the parties in that case. This point is discussed at pages 185 to 189 of the Commission's decision in that case and Mr. Jensen repeats the conclusion of the Commission that if no marked [fol. 698] differences in the ratio of increased costs to increased distance can be shown to exist then the added complexity of separate scales ought not to be introduced into the rate structure. In the absence of such a showing, he concludes that the rate spread between carload and less-than-carload should be provided by differences in the classification as at present. The theory is unsound in that it is, as the Commission has said, founded entirely upon the

theory of cost plus profit which can not be used as the sole standard in fixing rates. We see no reason for departing from our present practice of providing for the spreads between C.L. and L.C.L. by differences in classification ratings.

Sixth. The next proposal we wish to deal with is that the minimum charge for less-than-carload shipments be increased from 55 cents to "about 75 cents" and that picked-up and delivery service be made subject to a separate and distinct charge. Nothing is offered in support of this 75 cent minimum charge, but it so happens that the subject has received extensive consideration in the past by the Official Territory lines. They have conferred at length with shippers and have held public hearings. The present minimum charges are generally based on the applicable class or commodity rates for 100 pounds, but in no event is the charge less than 58 cents. The shippers asked that the minimum charge be based on the applicable class or [fol. 699] commodity rates for the actual weight of the shipment. No particular objection was raised to the 55 cent absolute minimum charge then in effect but opposition was voiced to an increase in this minimum to 75 cents.

Seventh: We see no reason for publishing a charge for performing pick-up and delivery service separate from the line-haul rate. The country-wide establishment of pick-up and delivery service was brought about by truck competition. The service of the truck is, of course, from door to door and the universal practice of the truck carriers has been to publish one rate for the complete service. The railroads, in order to participate in this traffic, must meet the competition as much as possible both from a rate standpoint and from a service standpoint. If a separate charge should be set up for the pick-up and delivery service the line-haul rates would have to be adjusted from and to each station so that the sum of such rates and the pick-up and delivery charges would equal the one-factor rates maintained by the trucks. Such a system of rate making would be wholly impracticable and, as we see it, unnecessary.

Eighth: At Page 102 Mr. Jensen presents query as to whether the railroads should graduate less-carload rates according to the weight of the shipment, recognizing that the desirability of such action seems to depend largely

[fol. 700] or wholly upon cost considerations. We think that graduated less-carload rates should not be required. In many cases motor truck carriers do apply such graduated rates, but we have no information as to their justification for them. In a few instances some rail carriers have published graduated rates on specific items in competition with motor carriers. So far as we are advised, shippers are divided on this question. Some would like to have such rates on the same basis as maintained by motor carriers, but others are very much opposed to them. Many who oppose them do so because of the effect on the carload as the unit of sale. Obviously, such a scheme of rate making would seriously affect commercial practices. It is our judgment that, certainly under present conditions, the Commission should adhere to the established differentiation between carloads and less-carloads.

Ninth: Mr. Jensen states at page 120 "Tariff rules which permit carload shipments to be stopped en route for further loading or for partial unloading are a development of recent years "and further, that the carriers have devised" a peculiarly illogical basis of charges for the service, which results in greatly restricting its usefulness to the public." While we doubt the wisdom of dealing with transit questions in this proceeding, as long as Mr. Jensen has raised the question we desire to comment on it.

[fol. 701] Mr. Jensen's suggestions run to the point that stopping cars in transit to finish loading or to partially unload should be liberalized for greater benefit to the shipping public. The service of stopping cars in transit to finish loading or to partially unload was never intended for application under such circumstances as are indicated in Mr. Jensen's comments, but rather was a privilege originated by the carriers in portions of the country years ago in order to facilitate the marketing of commodities from or to more or less sparsely settled communities where the volumes of traffic was relatively light and service was infrequent or uncertain. Stopping in transit to partially unload originated with building materials and agricultural implements to encourage settlement and tillage of the soil. Later, to take care of commodities produced in such communities, cars were permitted to be stopped in transit to finish loading—such as dairy products, live poultry, etc., where full carloads could not be accumulated at one point

but generally by the same shipper at two or more points located reasonably close one to the other? It is mentioned in early decisions of the Commission, viz. Stopping of Cars in Transit to Complete Unloading, 36 I.C.C. 130; Stoppage in Transit of Farm Wagons, 39 I.C.C. 731; Stop-Over on Cranberries, 128 I.C.C. 425. In Official Territory the stop-off arrangement attained more general application [fol. 702] first in Central Freight Association Territory, which was due, doubtless, to the more intense railroad competition in that territory. We have found instances where the stop-off privilege went as far back as the year 1890 on shipments of live poultry in coops. In 1895 the service was extended to apply on dressed meats. Except for some specific provisions, there were few stop-off arrangements in Trunk Line Territory until more recent years. This practice has naturally grown over a period of many years until now it is more or less uniform but is still used generally where the origin point, for one reason or another, cannot produce a full carload of the commodity in question or where a single destination cannot consume a full carload of the commodity involved.

The stopping of cars to finish loading or to partially unload is quite similar in principle to the interrupted service for the purpose of cleaning, milling, storing, fabricating or re-working a commodity in transit. Stopping of cars in transit to complete loading or to partially unload has frequently been criticised on the ground that the practice produces discrimination or undue prejudice. Thus, it has been contended that such service operates to effect such discrimination or prejudices in one or more of the following ways:

(a) By favoring a large shipper using plants at two [fol. 703] or more points versus a rival shipper with only one plant or only one shipping point;

(b) By giving the benefit of carload rates to final destination to less carload lots although such rates are predicated only on carload shipments from one consignor at one point of origin to one consignee at destination; and

(c) By working to the disadvantage of jobbers receiving carload quantities and distributing through their warehouses in smaller quantities.

There is always a question as to when an adjustment of this type is preferential to shippers who can take advantage of such arrangements and prejudicial to those who cannot. We believe that a more liberal application of this privilege such as that suggested by Mr. Jensen might cause the preferences to become undue. For general application within Trunk Line Territory, stop-off charge of $10,000 was published October 1, 1931. In November, 1932, the charge was reduced to $6.30 on storage batteries and parts. Effective October 1, 1933, the charge was reduced to $6.30 on all freight, this reduction having resulted from public hearing at which shippers appeared and protested that the $10.00 was excessive and that shipments would be handled by motor truck unless the charge was reduced to $6.30, it being pointed out that the truck companies' charge for partial unloading or to complete loading was less than [fol. 704] $6.30 per stop.

We cannot at this time forecast the effect in actual dollars and cents which the suggestions of Mr. Jensen would have on our revenues as a whole since the results would depend largely, if not entirely, upon the nature of the shipment stopped and the location of the stop-off point with reference to the points of origin and destination. I now refer to page 4 of Exhibit 46, showing the effect on a few selected movements, some actual, others suppositions. The wide range of results shown illustrates the difficulties of making any estimate of what would be the effect on our revenues. The indications are that our revenue would be substantially reduced.

Chairman Aitchison: Mr. Hawkes may stand aside, then, until tomorrow morning,—unless you have something further at this time.

Mr. Healy: Only to ask that the exhibit be received in evidence.

By Mr. Healy:

Q. Mr. Hawkes was Exhibit No. 46 for identification prepared by you or under your direction?

A. Under my direction.

Q. Is the information set forth therein true and correct, to the best of your knowledge and belief?

A. Yes.

Mr. Healy: I offer the exhibit in evidence.

[fol. 705] Chairman Aitchison: Is there objection? (No response.) Without objection, it is received.

(Exhibit No. 46, Witness Hawkes, received in evidence.)

Mr. Healy: You may stand aside, please, Mr. Hawkes.

(Witness excused.)

Mr. Healy: Call Mr. Hodkinson.

E. A. Hodkinson was sworn and testified as follows:

Direct examination.

By Mr. Healy:

Q. Mr. Hodkinson, please give your full name and address to the reporter.

A. My name is E. A. Hodkinson; 143 Liberty Street, New York City.

Q. What position do you hold with the Eastern Trunk Lines?

A. Commerce statistician, and a member of the Auxiliary Committee of the Trunk Line Association.

Q. Have you prepared a certain exhibit for use in this proceeding?

A. Yes.

Q. Will you proceed to identify them.

A. What is the next number, please?

Chairman Aitchison: 47.

A. 47 is a map.

By Chairman Aitchison:

Q. A map of what?

A. A map outlining the boundaries of Zones 100 and [fol. 706] 105, as described by Witness Jensen. Exhibit 48 is a table of first class rates and line haul elements for distances named in Zones 100, 105, 110, and 115, based on the Jensen formula. Exhibit No. 49 is the large exhibit, containing 191 sheets, and consisting of seven sections; section 1, between points in Zone 100, comprising Central

Freight Association Territory, which includes points in Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio and Wisconsin; and section 2, between points in Zone 105; section 3, between points in Zone 115; section 4, between points in Zone 100; section 5, between points in Zone 105; section 6, recapitulation of average equivalents taken from sections 1 to 5 inclusive; and section 7, a statement of examples showing the practical effect of the Jensen formula in connection with representative points in Official Territory.

Exhibit 50 is a two-page exhibit showing a comparison of present first-class rates and the first-class rates proposed by Mr. Jensen between representative points in Official Classification Territory. This exhibit shows the differences between the present rates, and the proposed rates, and the differences in cents per 100 pounds which the Jensen rates are higher or lower than our present rates.

Exhibit 51 contains 19 pages, showing the present first-class and fifth-class rates between New York and Chicago, [fol. 707] and various other representative points in Official Territory. It shows the differences in the rates between localities as of today, and what the differences would be under the rates proposed by Mr. Jensen.

By Chairman Aitchison:

Q. May I inquire at this point as to whether or not any abstract or summary of Exhibit No. 49 has been prepared?

A. No.

Chairman Aitchison: May I remind you, Mr. Healy, that our rules provide that where documents are voluminous, the Officer may require the party, in orderly fashion, to abstract the relevant data from the documents, afford other parties reasonable opportunity to examine both the documents and the abstract, and thereupon offer the abstract in evidence in exhibit form. Certainly you cannot expect us to go through an exhibit consisting of 191 tabulated pages, of this sort.

The Witness: If you please, Mr. Chairman, section 6 of this exhibit is a summary, consisting of a recapitulation of the various averages of sections 1 to 5, and those averages that are set forth in section No. 6 of the exhibit has been used throughout the examples which appear in section 7.

By Comm. Aitchison:

Q. Section 6 begins on page 33, does it?

[fol. 708] A. Section 6 commences on page 33 of the exhibit, yes, Mr. Chairman, and consists of pages 33 and 34; and all of the averages shown in section 6, as I just stated, are carried forward into all of the illustrations that are contained in the following sections, which is section 7.

Q. Well then virtually sections 1 to 5 of your Exhibit 49 are almost the same thing as working papers, are they not?

A. Why, I think that would practically be true, yes, sir, except that they cover specific representative points.

Q. And section 6 is a statement of the preceding averages.

A. Yes.

Q. In sections 6 and 7, you have 157 sheets.

A. Yes.

Q. How, or where, are we going to find what the material and relevant part of this is?

A. Well, in a case of this magnitude, Mr. Chairman, it is almost an impossibility to deal with a formula such as the Jensen formula, and show its effect on every particular point within Official Territory, in any brief way. The formula itself calls for a point-to-point application, based upon actual mileage between the respective points, and it is an impossibility to arrive at any average for the entire territory. Here we have endeavored to show what would result from the application of the Jensen formula, in so far as the particular articles are concerned, or the particu-[fol. 709] lar points are concerned, and the disruption that would be occasioned as the result of this entirely new theory and system of class rates, which Mr. Jensen's proposal would involve.

Chairman Aitchison: Well is it not possible, Mr. Healy, to bring this down to a little sharper focus, and get it more within the range of human vision, than 157 pages of single-spaced typewriting.

Mr. Healy: The only way we can do that, if the Chairman please, would be to cut down the number of illustrations which are used to support the criticism which is made of Witness Jensen's class rate structure. In other words,

we have a certain number of illustrations here, showing the effect on the present rates if Mr. Jensen's proposal were adopted, and we have used movements between many of the important points in Official Territory. The only way that the bulk of the exhibit could be cut down would be by eliminating a great many of the examples.

Chairman Aitchison: Or taking some as typical.

Mr. Healy: Or taking some as typical, yes, sir; the difficulty with that being, however, that it is our conclusion, from checking them, that we cannot take any as typical, because Mr. Jensen's proposal affects the rates between the different points in a different manner. The rates, under his proposal, as Mr. Hodkinson has pointed out, have [fol. 710] been made point-to-point.

Chairman Aitchison: All right.

Mr. Healy: Of course you will notice, Mr. Chairman, on sheet 35 of Exhibit 49, we have listed there the points between which these checks have been made, so that all you have to do is to refer to that particular page to find out the effect of the Jensen proposal on the rates between certain points.

Chairman Aitchison: Page 35?

Mr. Healy: Yes.

Chairman Aitchison: I do not believe the witness had finished identifying his exhibits.

Mr. Healy: No, Mr. Chairman.

By Mr. Healy:

Q. Had you completed your identification of your Exhibit No. 51, Mr. Hodkinson?

A. Yes.

Q. All right. Go to Exhibit 52.

A. Exhibit 52 for identification is a revenue study on carload shipments of glass containers, subject to column 27½ rating, per exceptions to Official Classification. The exhibit consists of 19 sheets, and is prepared in four sections. Exhibit No. 53 is a revenue study covering carload shipments of paper and paper articles, subject to column 27½-J rating, per exception to Official Classification. This exhibit is prepared in ten sections, and consists of [fol. 711] 35 sheets. Exhibit No. 54, consists of four sheets, and shows the ratios of commodity group totals to grand total of tons carried for the years 1937 to 1941 inclusive.

By Chairman Aitchison:

Q. Are those tons originated or terminated?

A. Those are tons carried—I beg your pardon, Mr. Chairman. This statement shows the ratios of commodity group totals to the grand total of tons carried.

Q. Both originated and terminated?

A. Both originated and terminated, yes, sir. Exhibit 55 consists of four sheets, and is a statement showing ratios of commodity group totals to grand total freight revenue. This exhibit, like the preceding exhibit, covers the years 1937 to 1941 inclusive. Exhibit No. 56 consists of four pages, and is a statement showing the tons of carload freight originated and terminated by commodity groups and by states, for Class I steam railroads, for the year 1940. Exhibit 57 consists of four pages, and is a statement showing tons originated and freight revenue by groups of commodities and districts for the calendar years 1931 to 1941 inclusive. It also shows the percentage which these particular groups constitute of the United States totals of the groups, and the percentage represented of the total traffic for the various ratings which are covered in the [fol. 712] exhibit.

Mr. Healy: Now, may Exhibits 47 to 57, both inclusive, be marked for identification, please.

(Exhibits 47 to 57, both inclusive, Witness Hodkinson, marked for identification.)

By Mr. Healy:

Q. Now, Mr. Hodkinson, have you prepared a statement, commenting on and explaining your exhibits?

A. Yes.

Mr. Healy: If the Commission please, this statement likewise——

The Witness: Pardon me, Mr. Healy. I might say, in connection with this statement, that there are various blank spaces that have been left for the insertion of exhibit numbers, where reference is made throughout the statement of the various exhibit numbers, which have not been previously dealt with.

Mr. Healy: This statement likewise was given to the parties on Tuesday, and I ask permission to have it dealt with in a manner similar to Mr. Hawkes' statement.

Chairman Aitchison: Is there any objection to that course? (No response.)

Mr. Healy: I may say, it deals solely with Witness Jensen's proposal.

Chairman Aitchison: You will see that the proper exhibit numbers are filled in, in the blank spaces referred to [fol. 713] by the witness, will you, Mr. Healy?

Mr. Healy: We will take care of that with the reporter, yes, sir.

Chairman Aitchison: Very well. It may be copied in, then.

The statement is as follows:

I am Commerce Statistician and Member of the Auxiliary Committee of Trunk Line Association. My testimony, which is presented in behalf of the rail carriers serving Official Classification Territory, deals with the suggestions of Witness Jensen and the practical effect they would have upon the rate structure under which we are now working and have worked without material difficulty for years. Under the Jensen proposal Official Territory would be subdivided into zones designated 100 per cent, 105 per cent, 110 per cent and 115 per cent. The initial zone 100 per cent covers Central Territory, which is limited in the proposal, Page 60, Exhibit 7:

"* * * to the plains section west of the Alleghany Mountains by moving the boundary between Central and Trunk Line Territories westward approximately to a line drawn from Cleveland, Ohio, to Huntington, West Virginia."

In view of the necessity for a clearly defined line with crossing points for use in the computation of distances for the determination of inter-zone rates we made a line of demarcation between Zone 100 per and 105 per cent as [fol. 714] shown on map, Exhibit 47. This line was drawn with due regard to the maintenance of the present rate relationships between the points on the line, Akron and Cleveland, for an example. In all of our calculations, Zone 100 rates have been used to and from all points on the line and points in Central Territory west; Zone 100 rates have been used between all points on the line; and Zone 105 rates have been used between all points on the line and Trunk Line and Zone A New England points. At the

bottom right-hand corner of the Map the crossing points situated on the line are listed in geographical order from north to south.

In the next Exhibit No. 48, I have compared the first class rates Appendix E, I. C. C. Docket 15879 (increased 10 per cent under ExParte 123) with the sum of the line haul elements for various distances in Zones 100, 105, 110 and 115, plus the terminal of 25 cents. Such line haul elements and terminal are based on the Jensen formula, as outlined at Page 80 of Exhibit No. 7, which provides a terminal element of 25 cents in all territories, plus line haul elements, as indicated: Zone 100; up to 500 miles. 17.8 cents per 100 miles; beyond 500 miles; 13.5 cents per 100 miles. Zone 105; up to 500 miles, 18.69 cents per 100 miles; beyond 500 miles, 14.175 cents per 100 miles. Zone 110, up to 500 miles, 19.58 cents per 100 miles; beyond 500 miles, 14.85 cents per 100 miles. Zone 115, up to 500 miles, 20.47 [fol. 715] cents per 100 miles; beyond 500 miles, 15.525 cents per 100 miles.

The line haul elements to be applied vary with the zones; the distances in each zone; and the total distance from origin to destination. The Jensen formula is fully described in Page 2 of Exhibit No. 48, and Pages 3 and 4 have been devoted to illustrations of the calculations required for the determination of inter-zone rates. Two line haul elements are provided for each zone; the primary for distances from one to 500 miles and the secondary, for distances over 500 miles. However, the secondary line haul element is applied on inter-zone traffic whenever the distance in one or more of the zones traversed exceeds 500 miles. Thus in the case of a shipment having a haul of 510 miles in Zone 100, 50 miles in Zone 105; and 30 miles in Zone 110, the rate would be computed as follows: Primary element for 500 miles, Zone 100, secondary element for 10 miles, Zone 100; secondary element for 50 miles, for Zone 105; secondary element for 30 miles, Zone 110, plus terminal element of 25 cents. Another illustration would cover a haul of 200 miles in Zone 100. 400 miles in Zone 105, and 20 miles in Zane 115. In this case the rate would be computed as follows: Primary element for 200 miles in Zone 100, primary element for 300 miles in Zone [fol. 716] 105, secondary element for 100 miles in Zone 105, and secondary element for 20 miles in Zone 115 plus terminal element of 25 cents.

A further requirement in the determination of interzone rates is the application of the primary line haul elements for the lowest rated zones, in sequence, from the lowest to the highest for the first 500 miles of the total distance. Assuming hauls of 100 miles in Zone 120, 110 miles in Zone 110, 100 miles in Zone 100, 200 miles in Zone 105, 50 miles in Zone 130, and 200 miles in Zone 140, the first-class rate under the Jensen formula would be computed as follows: Primary line haul element for 100 miles in Zone 100, primary line haul element for 200 miles in Zone 105, primary line haul element for 100 miles in Zone 110, primary line haul element for 100 miles in Zone 120, secondary line haul element for 50 miles in Zone 130, and secondary line haul element for 200 miles in Zone 140, plus terminal element of 25 cents.

In all our computations we have also followed Mr. Jensen's formula with regard to the elimination of fractions of cents and the use of the shortest route over which a shipment can be moved without the transfer of lading. Although Witness Jensen's statement at Page 80 of Exhibit No. 7 indicates that he intended the proposed rates under his formula to be arranged in mileage blocks, the formula necessitates point to point computations. All mile-[fol. 717] age scales previously prescribed by the Commission have block progressions which increase with distance. Appendix E Scale of I. C. C. Docket 15879 is a case in point. Up to 100 miles its block progression is 5 miles; from 101 miles to 240 miles its block progression is 10 miles; from 241 miles to 800 miles its block progression is 20 miles; and from 801 miles out its block progression is 25 miles.

To further support the statement that under the Jensen formula point to point computations are required, our examination of the examples of the present and proposed first class rates shown in Appendix 2 of Exhibit No. 7 discloses that all of these rates have been figured on basis of actual point to point short line miles and not on any constructive block system. Assuming 20 mile blocks, an inflation of 38 miles is possible in two zones, and it would be particularly difficult to deal with this inflation because of the upward trend of the line haul elements in the various zones.

If the Appendix E mileage blocks were used there could be instances where an intra-zone 100 per cent rate would be higher for a less distance than for an inter-zone rate

(100 per cent—105 per cent Zone) for a greater distance. Taking a border point and an actual distance of 481 miles in Zone 100 the rate would fall in the 500 mile block and would be $1.14. For a distance of 10 miles in Zone 105 [fol. 718] and 480 miles in Zone 100 the rate would be: Primary Scale for 10 miles, Zone 105, 1,8690 cents; primary scale for 480 miles, Zone 100, 85.440 cents; terminal element, 25 cents; or a total of 112.3090 cents—$1.12. In view of what I have just said and the fact that Mr. Jensen's examples were also figured on a point to point basis, we have made our comparisons on the same basis. Section 1, Exhibit No. 48 comprises Pages 5 to 27, inclusive. In this Section of the Exhibit we have compiled rate tables under the Jensen formula. These tables show the 1st class rates thus obtained for intra-zones distances from 1 mile to 720 miles in Zone 100, 1 mile to 1600 miles in Zone 105, 1 mile to 1,000 miles in Zone 110, and 1 mile to 900 miles in Zone 115, which we figure will take care of all intra-zone distances. As previously stated, the primary scale was used up to 500 miles and the secondary scale thereafter.

The line haul elements shown in Section 1 also have application for building up inter-zone rates as follows: Zone 100—for all distances regardless of the length of the combined haul for all zones. Zones 105—110 and 115 (a) When the combined haul for all Zones is less than 500 miles; and (b) For all distances within the respective Zones, provided no part of the combined distance for all Zones is in a lower rated Zone than 105, 110 or 115, as the [fol. 719] case may be. In addition to showing the line haul element without terminal for each mile progressively, the Exhibit also shows for each mile the sum of these line haul elements and 25 cents terminal. This figure is compared with the I. C. C. Docket Appendix E Scale (increased 10 per cent under Ex Parte 123), and the rates at the mileage break blocks in that scale.

Section 2 of Exhibit No. 48 comprises Pages 29 to 41, inclusive, and is based on the secondary line haul element without terminal proposed by Witness Jensen for distances in excess of 500 miles. It shows the line haul element without terminal for each mile: From 1 to 1100 in Zone 105 per cent, from 1 to 500 in Zone 110 per cent, and from 1 to 420 in Zone 115 per cent. These secondary line haul elements are to be used in the computation of inter-

zone rates when the combined distance exceeds 500 miles. The I. C. C. Docket 15879 mileage block breaks are those provided in Appendix E for distances in excess of 500 miles. Among the difficulties created by the Jensen formula one of the most disturbing is the computation of distances inter-zone, especially between Zone 100 to Zone 105 and Zone 105 and 115. Later on I shall deal further with this phase of the question and I mention it now because we do not wish to create the impression that having compiled tables of first class rates and line haul elements, our [fol. 720] labors would be practically over. Before leaving Exhibit No. 48, I again desire to direct attention to the methods to be used in the determination of the first class rates under the Jensen formula, which are outlined in Pages 3 and 4 of the Exhibit. All of the factors used in those examples are contained in Sections 1 or 2 of the Exhibit.

The Jensen proposal has four outstanding features: First, a revised basic first-class rate for all Zones delimited in the proposal; second, the maintenance of the present aggregate revenues of the railroads; third, revision of classification ratings to bring about this preservation of the present aggregate revenues, and fourth, a discount theory applied to carload traffic under the provisions of which the weight in excess of minima would be subjected to a lower rate than that applied in connection with such minima.

Thus far I have only dealt with the first of these outstanding features and the first class rates shown in my last Exhibit are without regard to the treatment to be accorded them in line with the above qualifications made by Mr. Jensen. In connection with the maintenance of the present aggregate revenues of the railroads, Mr. Jensen said at Page 55 of Exhibit No. 7:

"No readjustment of class rates should be required which would diminish the aggregate revenues of the railroads [fol. 721] in any section, because nowhere are they earning as much on their investment as they have a lawful right to do. Neither, should a readjustment be made which would have the effect of sharply changing the rate level on any particular commodity or form of traffic, because while highway transportation is now available to class rate traffic everywhere, many an industry and factory is still vitally

affected for good or ill by changes in the railroad class rates."

The proposed revision of classification ratings to bring about this desired result rests upon the determination of average hauls. In dealing with this phase of the question, Mr. Jensen said, (under cross-examination) at Page 273 of the record:

"In general the combination of the reduction in class rate and increase in classification would result in maintaining the present rate for hauls of average length on the particular commodity. For hauls, shorter than the average length, the rate would be reduced and for hauls longer than average, it would be increased."

I shall deal with these two phases of the question, but another witness will cover the discount theory. However, it should be apparent that the discount theory adds to the complexity of the problem of revising classification ratings in such a manner as to preserve existing revenues. The [fol. 722] proposed revision is to be based upon an average haul which involves the determination of an average rating for the various articles to the end that carriers revenues will be preserved. Mr. Jensen admits that under his proposal the present rates would be reduced for hauls shorter than average length and increased for hauls longer than the average with parity for hauls of average length. Therefore, while long haul carriers might be able to break even, there is no hope for the short haul carriers. The difficulties facing the rail carriers under the Jensen proposal are readily apparent. Although the figures are not available, no one could seriously claim that the average haul on each commodity is the same for each commodity is the same for each railroad and each Zone. On the contrary, one would expect wide differences, such as exist, between the various carriers in connection with the average haul on all freight.

Each of the major classes contained in the Classification cover numerous items, representing different commodities. In Official Classification No. 58, 2330 items carried first class rating; 3398 items carried second class rating; 4083 items carried third class ratings; 1834 items carried R-26 rating; 2150 items carried fourth class rating; 1077 items carried Column 40 rating; 2495 items carried fifth class rating; and 661 items carried

[fol. 723] sixth class rating. It is safe to assume that there would be wide variations in the average hauls for the articles within the same class rating. The only method by which the average haul could be obtained would be through the medium of a traffic study which would be prohibitively costly and out-dated before its completion. The nearest we can come to approximating an average is to determine the per cent which must be applied to the Jensen proposed first class rate to produce the present rate and then strike an average for various distances. We have undertaken to do this by a comprehensive study of the rates proposed for Zones 100, 105 and 115, respectively, and inter-zone between Zones 100, 105 and 115, selecting points between which the short line distances approximate a 25 mile block progression.

In this Exhibit No. 49, our examples are based upon present rates and ratings for 20 classes ranging from 100 per cent down to 16 per cent of first class. These rates and ratings are applicable to representative commodities in Official Classification. All rates shown in this Exhibit are exclusive of Ex Parte 148 increases. Section 1 of this Exhibit covers specific points and distances from 1 to 674 miles in Zone 100 which embraces Central Territory other than Eastern Ohio.

The Exhibit shows present rates, the proposed first class rate under the Jensen formula for the short line distance [fol. 724] and percentage of the Jensen first-class rate necessary to yield the present rate under any of the columns indicated. For example, on sheet one from Indianapolis, Indiana, to Bolivar, Indiana, distance 100 miles, the present first-class rate is 62 cents and under the Jensen formula would be 43 cents. An article now rated first class or Column 100 would require re-rating to 144 per cent of first class in order to preserve revenue under a reduced first class rate of 43 cents. An article now taking fourth class or column 50 would be subject to rate of 31 cents and under the proposed first class of 43 cents the article would have to be re-rated at Column 72 or 72 per cent to preserve present rate of 31 cents. An article subject to sixth class Column 27½ would be charged at rate of 17 cents and under proposed first class rate of 43 cents would have to be re-rated at Column 40 to preserve present rate of 17 cents.

Take another example Chicago to Sandusky, Ohio, a distance of 325 miles. Present first class rate is $1.01 and pro-

posed 83 cents. The inflation necessary in present rating to preserve present revenue is reflected in Column 100 and is 22 per cent. An article now subject to fourth class, Column 50, would have to be advanced to Column 61, and sixth class, Column 27½, would have to be changed to Column 34. Another illustration on Sheet 2, Cairo, Illinois, [fol. 725] to Vassar, Michigan, distance 600 miles. Present first-class is $1.35 and proposed $1.28. Here the increase in ratings would be 5 per cent. An article subject to Column 50 or 68 cents would have to be re-rated at Column 53 and 6th class Column 27½ would go to Column 29.

What has been said with respect to these points is typical of the other examples shown in this Exhibit. It is the purpose to find ratings which would have general application throughout Official Territory, since it would be impracticable to charge on a article now taking Column 50 rate, Column 72—Indianapolis to Bolivar, Column 61, Chicago to Sandusky, and Column 53, Cairo to Vassar. No single rating between two points can of itself fix the basis for general application and an average must be found that will most nearly preserve the present revenues. As previously stated, there are thousands of articles in the Official Classification represented in the twenty classes selected and the average hauls will vary greatly for the individual items.

We have shown averages at 100, 150, 200, 250, 300 and 337 miles. Opposite these average distances are shown the average percentage equivalents of the proposed first class rates that would be necessary to preserve present revenues, if the distribution should be within the range of distances reflected by the averages.

[fol. 726] The figures shown opposite the word average are cumulative. The average of 100 miles represents the sum of the miles for the nine points shown, covering hauls of from 1 to 200 miles, divided by the number of points. The average percents of 100 miles represent the sum of the percents for the nine points shown divided by the number of points. The average of 150 miles covers sum of distances 1 to 300 miles and sum of percents for the thirteen points shown and so forth.

Section 2 of this Exhibit covers points within Zone 105 embracing Central Territory in Eastern Ohio, present Trunk Line Territory and Zone A, New England, for distances of from 1 to 1076 miles. The present rates reflect the higher level of rates prescribed within Zone A,

New England, the basic scale per Appendix E within Trunk Line Territory and the Appendix J key rates between basing points. In each instance the proposed rates are based on the exact mileage for application within Zone 105 under the Jensen formula. In the light of the explanation offered in connection with Section 1, it is not necessary to deal with the details of this study. It follows that since the proposed rates are 5 per cent higher than within Central Territory the equivalents necesary to preserve present rates on the average will be slightly less than in Central Territory. In this Exhibit the effect of the Jensen proposal [fol. 727] will be observed for greater distances than obtainable within Zone 100, for example, from Boston, Massachusetts, to Bellaire, Ohio, 725 miles, the present first class is $1.42 (key points basis) and proposed first class $1.50. Here the equivalent percentage to preserve present rates is 95 per cent or a lower column rating than the present rates. Fourth class Column 50 would be preserved by a new rating of Column 47 and sixth class Column 27½ would be preserved by Column 26. Averages have been shown for 100, 150, 200, 250, 300, 350, 400, 450, 500 and 537.

Section 3 covers points within Zone 115 embracing Northern New England, for distances from 1 to 350 miles. In the Eastern Class Rate Case this territory was described as Zone B, New England. This section has been built up along lines similar to the previous sections covering Zones 100 and 105 and shows the present class rates for Columns 100 to 16 inclusive, the proposed first class and equivalent percentage to preserve present rates. It will be noted that the proposed rates within this territory are materially lower than the present rates and the present ratings would, therefore, have to be increased in excess of 50 per cent to maintain present revenues. In this section the proposed rates would produce the most radical changes in Official Territory. Averages have been shown for 100, 150 and 175 miles. In connection with Section 4 of this [fol. 728] Exhibit which covers inter-zone rates, it becomes necessary to explain the formula followed in the computation of the through short line distances, which were figured by the short route over which a shipment can be moved without transfer of lading. This necessitated finding by a process requiring many calculations the contact point on the boundary line between the various Zones via which the short line distances made. We then

applied the formula which I explained in connection with Exhibit No. 48.

Section 4 covers representative points in Zones 100 and 105 for distances ranging up to 1291 miles built up in 25 mile block progression. The contact point over which the short line distance is computed, and the distance in each Zone is shown. The points shown in this section of the exhibit were selected with the view of having the greater portion of the distance fall in Zone 100. The examples shown indicate that the equivalent ratings would be as high as 147 per cent at 51 miles and as low as 90 per cent at 1275 and 1291 miles. Average equivalents have been struck at 100, 150, 200, 250, 300, 350, 400, 450, 500, 550, 600 and 650 miles. Section 5 is similar to Section 4 and it also covers representative points in Zones 100 and 105 for distances ranging up to 1291 miles in 25 mile block progression. The points shown in this section of the Exhibit were selected with the view of having the [fol. 729] greater portion of the distance fall in Zone 105.

The laminated basis of construction for the proposed inter-zone rates brings about different rates for the same through distance depending upon whether the preponderance of the haul is in Zone 100 or Zone 105. As examples: Section 4, Cincinnati, Ohio to Sisterville, West Virginia, 250, miles, first class rate, 70 cents. Section 5, Rockwood, Pennsylvania, to Newark, Ohio, 250 miles, first class rate, 71 cents. Section 4, Chicago, Illinois, to Alliance Junction, Ohio, 375 miles, first class rate, 92 cents. Section 5, Rochester, New York, to Newark, Ohio, 374 miles, first class rate, 94 cents. Section 4, Chicago, Illinois, to Tidioute, Pennsylvania, 499 miles, first class rate, $1.15. Section 5, Baltimore, Maryland, to Vernon, Ohio, 499 miles, first class rate, $1.18. These examples depict only a few of hundreds that could be presented showing different rates for equal through distances and requiring different equivalent ratings.

Section 6 contains the summary of the percentages which would have to be applied to the first-class rates proposed by Mr. Jensen in order to produce the present rates. These percents cover the twenty classes from 100 down to 16 per cent for average distances (50 mile blocks) ranging from 100 miles to 650 miles, inclusive. The examples shown in

this section of the Exhibit clearly demonstrate the import-
[fol. 730] ance of the average haul in connection with the suggested revision of classification ratings to preserve present aggregate revenues. The percentage equivalents required to bring about this result vary with distance. The average equivalent is greatest at 100 miles in Zone 115, at which point it is 153 per cent for first-class and this percentage relationship is reflected in the lower classes. The average equivalent is lowest at 650 miles in Zone 105 to Zone 100 at which point it is 108 per cent for first-class.

The various sections of the Exhibit which I have so far dealt with show the effect of substituting the Jensen proposed rates for the present rates and the disruption that would occur, first in point to point ratings, and second, in rates for average hauls of varying lengths within Zones 100, 105 and 115, respectively, and finally to ratings for average hauls inter-zone. We have not yet been able to even approximate an average haul for any class within Official Territory, which would be necessary if the carriers ever hoped to find the substitute for present ratings, which would preserve their present aggregate revenue. As I have previously stated the twenty classes depicted on this Exhibit represent thousands of items in Official Classification, many of which would undoubtedly move for average hauls varying in distances. Assuming a desire to continue to assemble various articles into a minimum of classes for
[fol. 731] general application in Official Territory as at present, in Section 7 of this Exhibit I have shown the effect of applying average equivalent ratings thus far developed to actual rates between important points in Official Territory.

These average equivalents have been determined from rates representing hauls progressed for each 25 miles. The most that can be said for them is that they give some indication as to what would happen to individual rates. It is safe to assume that the average would fall somewhere within the range shown, but the actual effect depends entirely upon where the weight of movement occurs. Ninety-nine sets of examples are shown and the figures are based upon those showing the average distances in each Zone and between Zones 100 and 105. These examples cover representative points in Official Territory and on each sheet is shown the point of origin and destination; short line distance; the zone or zones in which the points are located;

the present published first-class rate and proposed first-class rate under the Jensen formula.

Under Classes 100 to 116 appear the present class rates and the percentage equivalent that would be necessary from the specific point of origin to destination under the proposed first-class rate to yield the same rate per 100 pounds. Since it is necessary to develop an average of rates under [fol. 732] the Jensen plan to preserve carriers' revenue, we show on this exhibit what the effect would be on present rates of applying the averages obtained at 100 miles, 150 miles, 200 miles, etc., to the proposed first-class rates from and to the representative points. The exhibit shows in the following order, the average equivalent ratings, which are percentages of first-class for the various average distances and the rates that would result from such averages applied to the proposed first-class rate under the Jensen formula, and the increases or reductions in cents per 100 pounds that would occur in the present rates. This study sets forth the changes that would be occasioned whether the average hauls be in Zone 100, 105, 115, 100 to 105 or 105 to 100.

For the longer haul between New York and Chicago, while the proposed first-class rate is higher than the present rate and an equivalent column rating of 98 per cent would preserve present revenue, this cannot be used if an average is to be used which will represent the highs and lows of the proposed rates. The general effect would be to materially increase the present rates for this movement of 890 miles. To show how this works let us assume that on a fifth class article taking Column 35 the weighted average haul would be 450 miles in Zone 105. Under the proposed rates this would require the application of Column 40 to preserve [fol. 733] revenues. Applications of Column 40 to the proposed rate of $1.71 from New York to Chicago would produce a rate of 69 cents or 11 cents higher than the present Column 35 rate of 48 cents. On a 40,000 pound shipment this would be $44.00 per car. This example is only typical of what change could take place. The Exhibit shows many other instances where a much greater disturbance would occur.

My next Exhibit No. 50, compares the present first class rates with those that would be obtained under the Jensen formula for the short line distances shown which are computed via lines operating within the United States. The points shown are representative and important points in

Official Territory. In the case of inter-zone movements we have shown the short line mileage in the respective Zones and the border points through which the lowest mileage is obtained.

The purpose of this Exhibit is to show the extent to which the proposed first class rates are higher or lower than the present rates between the same points. In order to avoid repetition when the rates have been shown in one block, we have not reproduced them in the next block. Thus the rates in second block on Page 1 do not include those between Washington, Norfolk, Albany, Rochester, Boston, New York, Philadelphia and Baltimore, because they appear in the first block. The rates not shown in the third block on [fol. 734] Page 2 are shown in blocks 1 and 2 and those not shown in the fourth block, Cincinnati, etc., appear in blocks 1, 2 or 3.

It will be noted that the Jensen proposal would result in reduced first class rates between Washington, D. C., and all points shown in the Exhibit ranging from 20 down to 2 cents. Baltimore shows reductions in all but two instances ranging from 18 down to 1 cent, and the increases would be 2 cents and 1 cent respectively. The greatest increase shown in the Exhibit is 23 cents Boston to Milwaukee and the greatest decrease is 24 cents Boston to New York. Attention is also directed to the different results obtained for approximately the same miles. For 725 miles, between New York and Detroit, the Jensen proposal would produce an increase of 14 cents over the present first class rates. For 724 miles, between New York and Cincinnati, the Jensen proposal would produce a decrease of 1 cent under the present first class rate. For 743 miles, between Washington and Chicago, the Jensen proposal would produce a decrease of 4 cents under the present first class rate. These are typical of many other incongruities depicted in the Exhibit.

In my next Exhibit No. 5, which consists of nineteen pages, I have compared the present and proposed first to sixth (Columns 100 to 27½) domestic class rates between repre- [fol. 735] sentative points in Official Territory. I have also shown on each page the present rate relationship and the extent to which it would be changed. Regardless of any rearrangement of ratings to preserve the carrier's present aggregate revenue, there would still be articles that would fall in Classes 100, 85, 70, 55, 50, 35 and 27½, and under the Jensen proposal the differences between localities in reach-

ing given points would be accentuated. These differences have been watched zealously in the past and any widening in the present spreads would be of vital concern to the public and the railroads.

The present spread in the first class rate between Boston and Chicago, and New York and Chicago is 2 cents, in favor of New York. Under the Jensen proposal it would be increased to 13 cents. The present sixth class rate is the same between Boston and Chicago, and New York and Chicago. Under the Jensen proposal the sixth class rate between Boston and Chicago would be 51 cents which is 4 cents higher than the proposed 6th class rate of 47 cents New York and Chicago. Still comparing New York and Boston, the spreads between those cities and other points is increased, viz: Pittsburgh from 25 to 36 cents; Buffalo, from 10 to 14 cents; Cincinnati, from 13 to 23 cents; St. Louis, from 9 to 18 cents. Every page of this Exhibit shows that the Jensen proposed rates would widen the [fol. 736] present spread in the rates between the points covered.

In my preceding exhibits I have shown the percentages that would have to be applied to Jensen's proposed first class rates to make them equal the present rates. These calculations are all arithmetical and merely show what would happen to point to point rates if the average haul fell within the range of the various averages shown for the several zones. As I said then, the average haul can only be determined by a traffic study which would be costly and out-dated before its completion due to the change in the composition of the total traffic and its flow of movement from month to month and year to year. We have, however, prepared studies covering Glass Containers and paper and Paper Articles.

My next Exhibit No. 52, covers Glass Containers subject to Column 27½ rating per Exceptions to Official Classification having origin and destination within Official Territory. This study covers the traffic of the 11 railroads listed on the title page during the period February 5 to 11, 1942. The exhibit is in four sections covering Zone 100, Zone 105 and Inter-zone between points in Zone 100 and Zone 105 and between points in Zone 105 and Zoe 100, respectively.

In each section we have shown against each origin and destination the underlying factors required for the deter- [fol. 737] mination of the percentages of the proposed

first class rates necessary to produce present rates. We have also shown the revenues which would be obtained based upon rates made 27½ per cent of the proposed first class rates and based upon rates made 29.95 per cent of the proposed first class rates. This latter figure of 29.95 per cent represents the percentage it will be necessary to apply to the proposed first class rates to produce present aggregate revenue. The significant figures in this exhibit appear in the recapitulation on Page 19. The total revenue received from these 1307 shipments was $141,287.31. The revenue based on 27½ per cent of the Jensen proposed first class rates would be $129,720.03. In view of the provision in the Jensen proposal that carriers' aggregate revenues shall be preserved, it would require a higher percentage than 27½ per cent of the proposed first class rate to bring about this result.

The total present revenue which appears in Column 3 is 108.917 per cent of the revenues which would be obtained based on 27½ per cent of the Jensen proposed first class rates. 27½ per cent of this figure produces the average of 29.95 per cent for the entire territory covered by the exhibit. This 29.95 per cent was applied to each of the proposed first class rates shown in Sections 1 to 4, inclusive, of the Exhibit [fol. 738] and the total revenues determined come within a few dollars of the present revenue. While 29.95 per cent of the proposed Jensen first class rate is required to maintain aggregate revenue for the entire territory covered by the Exhibit, a different percentage would be required in connection with each Zone or Zones covered by Sections 1 to 4, inclusive; the percentages varying from 27.51 per cent in Section 2 to 33.96 per cent in Section 1.

This Exhibit illustrates the disruption that would occur in our present rates as a result of substituting the proposed Jensen first class rate for the present rates prescribed by the Interstate Commerce Commission in the Eastern Class Rate Investigation, I. C. C. Docket 15879. The application of averaging r ing of 29.95 per cent of first for present rate of Class 27½ would bring about substantial reductions in revenue for short haul movement and increases for long hauls.

For example, in Section 1, Sheet 2, Indianapolis, Indiana, to Lawrenceburg, Indiana, distance 91 miles, present rate 17 cents—proposed 12 cents. Section 2, Sheet 4, Connellsville, Pennsylvania, to Schenley, Pennsylvania, a

distance of 74 miles, present rate 16 cents—proposed 12 cents. Section 2, Sheet 3, Charleston, West Virginia, to Boston, Massachusetts, a distance of 840 miles, present rate 43 cents—proposed 50 cents. Section 3, Sheet 3, [fol. 739] Zanesville, Ohio to Pittsburgh, Pennsylvania, a distance of 144 miles; present rate 20 cents—proposed 16 cents. Section 3, Sheet 2, Alton, Illinois, to Boston, a distance of 1167 miles, present rate 53 cents—proposed 62 cents. Section 4, Sheet 3, Washington, Pennsylvania, to Medina, Ohio, a distance of 154 miles, present rate 20 cents—proposed 16 cents. Section 4, Sheet 2, Baltimore, Maryland, to East St. Louis, Illinois, a distance of 891 miles, present rate 46 cents—proposed 51 cents.

This study is only indicative of those it would be necessary for the carriers to make covering the thousands of commodities now handled by them in order to determine with any degree of accuracy what ratings should be substituted for our present ratings to produce under the Jensen proposal the revenue obtained under our present rates.

My next Exhibit No. 53, is a traffic study covering 1533 carload shipments of Paper and Paper Articles, subject to Column 27½J rating by Exceptions to the Official Classification, having origin and destination at points in Official Territory. This study was compiled from data submitted by the 11 railroads listed on the title page, and covers the period February 5 to February 11, 1942. This exhibit, which consists of 10 sections, was prepared in the same form and manner as explained in connection with my preceding exhibit covering Glass Containers.

[fol. 740] The significant figures appear on the recapitulation sheet, Page 35 of the Exhibit. The total revenue under the present rates is $212,241.56. Under the proposed Class 27½ without treatment to preserve the present revenues, the revenue would be $194,787.66. As shown in Column 9, Page 35, our present revenue is 108.960 per cent of the revenue which would be obtained by the application of 27½ per cent of Jensen's proposed first class rates. 27½ per cent of 108.960 is 29.96 per cent, which is the per cent which would have to be applied to the proposed Jensen first class rates to produce our present aggregate revenues. This has been done on each sheet of the exhibit, and the small difference between the figure thus obtained which is shown in Column 11 and the present revenue shown in Column 3 is due to disposition of fractions.

This exhibit shows that on the average a higher percentage of the proposed first class rates would be required to equal present revenue. The average percentage equivalent in the various zones varies from 25.28, Section 7, to 42.31 per cent, Section 8. This Exhibit, as did the exhibit covering Glass Containers, demonstrates the disturbance that would be created in our present rate structure if the Jensen proposal should be given effect. Here again the revenues for short hauls would be reduced appreciably and those for longer hauls increased. The application of 29.96 per cent to Jensen's proposed first class rates would involve a reduc- [fol. 741] tion in revenues on the total shipments covered by Sections 1, 2, 5, 6, 8 and 9, while increases and decreases with the increases predominating would result in connection with Sections 3, 4, 7 and 10.

Mr. Jensen recognizes that use of average distance for the determination of revised ratings would bring about reductions for hauls less than the average and increases for hauls in excess of the average. As I previously stated, a long haul carrier might be able to recoup its losses on short haul traffic by its gains on long haul traffic, but the short haul carrier has no such protection under the proposed basis. The traffic studies covering Glass Containers and Paper and Paper Articles, limited as they are in scope, required 2379 man hours for their compilation. This does not include the man hours devoted to the collection of the underlying data by the individual railroads.

The information developed in these studies would be of little, if any, help in progressing additional studies covering other commodities. In my previous testimony I have several times stated that the compilation of a comprehensive traffic study would not only be a costly proposition but that the study itself would be out-dated before its completion. This is due to the fact that the composition of the traffic varies with the various roads from year to year, [fol. 742] and that the flow of traffic is constantly changing.

My next Exhibit, No. 54, is a statement showing ratios of commodity group totals to grand total of tons carried by the Class 1 carriers serving the Eastern District, including the Pocahontas Region. This exhibit depicts the wide variation between the carriers in the ratio of the tons carried in the various commodity groups to the grand total of all tons carried. Taking the year 1941 as illustrative,

while the New England ratio of Products of Agriculture to the total tonnage was 13.67 per cent for all roads in that region, that ratio reflects variations ranging from 55.23 per cent for the International Railway Company of Maine down to 6.87 per cent for the Boston & Albany Railroad. The Great Lakes Region ratio, Products of Agriculture, is 5.95 per cent of the total tonnage, but the variations range from 17.37 per cent in the case of the Wabash Railroad down to .07 per cent for the Montour Railroad. For the railroads comprising the Central Eastern Region the ratio, Products of Agriculture, is 3.67 per cent of the total tons, but the variations for the individual roads range from 9.67 per cent in the case of the Chicago & Eastern Illinois Railroad to .10 per cent in the case of the Bessemer and Lake Erie Railroad. The ratio for the roads comprising the Pocahontas Region is 2.23 per cent while the variations [fol. 743] in the individual roads range from 16.35 per cent in the case of the Richmond, Fredericksburg & Potomac Railroad down to 1.05 per cent in the case of the Virginian Railway.

In view of the fact that most of the commodities which would be covered by the Classification re-rating suggested by Witness Jensen would fall into the Manufactures and Miscellaneous group, it is interesting to note the figures in connection with that group. For the roads serving the New England Region the ratio of tons carried to total tons is 44.25 per cent, but the variations range from 51.03 per cent in the case of the Boston & Albany Railroad down to 29.04 per cent in the case of the International Railway Company, of Maine. Much wider variations obtain between the carriers serving the Great Lakes Region. For all roads serving that region the ratio of Manufactures and Miscellaneous tons carried is 30.96 per cent of all tons carried, the variations ran-ing from 40.35 per cent in the case of the Pere Marquette Railway down to .15 per cent in the case of the Cambria & Indiana Railroad, while for the New Jersey & New York Railroad the figure is not expressed because it was less than .01 per cent.

The variations between the carriers serving the Central Eastern District in connection with tons carried, Manufactures and Miscellaneous, range from 62.74 per cent in the case of the Detroit, Toledo & Ironton Railroad down [fol. 744] to 7.54 per cent in the case of the Bessemer &

Lake Erie Railroad, while the ratio for the group was 31.79 per cent. The ratio for the Pocahontas Region was 11.95 per cent and the variations range from 44.92 per cent in the case of the Richmond, Fredericksburg & Potomac Railroad down to 7.15 per cent in the case of the Virginian Railway. It should also be noted that the ratios for the individual lines and for the groups of which they form a part, vary from year to year. In the five years covered by the exhibit the ratio of Manufactures and Miscellaneous fluctuated from a high of 44.25 per cent to a low of 39.71 per cent for the roads in the New England Region; from a high of 30.96 per cent to a low of 25.90 per cent for the carriers in the Great Lakes Region; from a high of 31.79 per cent in 1941 to a low of 28.71 per cent for carriers in the Central Eastern Region; and from a high of 11.95 per cent to a low of 9.26 per cent for carriers in the Pocahontas Region. Similar fluctuations occur in connection with each of the other commodity groups.

Mr. next Exhibit No. 55, is similar to the preceding Exhibit, except that it expresses the ratio of the freight revenue derived from the transportation of the several commodity groups to the total freight revenue. This Exhibit likewise shows the variation in the composition of the traffic for the individual roads. The total freight [fol. 745] revenue for the Eastern District including the Pocahontas Region for the year 1941 was $2,275,125,129.00. In view of this, it will be appreciated that a variation of one percentage point is material.

During the years 1937 to 1941, inclusive, the ratio of the freight revenue derived from the transportation of the articles included in Manufactures and Miscellaneous Group range from a high of 48.73 per cent to a low of 42.03 per cent for the carriers in the New England Region; from a high of 47.50 per cent to a low of 39.61 per cent for carriers in the Great Lakes Region; and from a high of 43.17 per cent to a low of 37.68 per cent for carriers in the Central Eastern Region and from a high of 18.20 per cent to a low of 14.31 per cent for the carriers in the Pocahontas Region. Similar fluctuations are shown in connection with all other commodity groups. These fluctuations for the several regions are not as great as they are between the individual roads serving those regions.

Mr. next Exhibit No. 56, is a statement showing tons of carload freight originated and terminated by commodity

groups, by areas and by states, Class 1 Steam Railroads, for the Years 1940 and 1941.

This Exhibit shows the wide difference between the States with regard to composition of traffic, and also serves as an indication of the volume of inter-territorial traffic. [fol. 746] Except as to Manufactures and Miscellaneous Commodity group, the States wholly within Official Territory terminate more tonnage than they originate. As an example, they originated 24.87 per cent of the total Products of Agriculture originated in all areas and terminated 37.90 per cent of the total tons terminated in all areas. In connection with Manufacturers and Miscellaneous Commodity Group, the States wholly within Official Territory originated 58.88 per cent of the total tons originated in all areas, and terminated 55.87 per cent of the total in all areas. This Exhibit serves as a further illustration of the complications that would arise in connection with any attempt to revise classifications so as to produce the present aggregate revenue because of the variations in the composition of the traffic within the various States and between the various States.

My next Exhibit No. 57, is a statement showing number of tons originated and the freight revenue by groups of commodities and districts for the calendar years 1931 to 1941. It consists of four pages and shows as to each district or region the percentage which the tonnage and revenue in the various commodity groups represents of the total for the United States. It also shows the percentages which the tonnage and freight revenue in the various commodity groups represent of the total tons and [fol. 747] freight revenue for the various districts and regions.

As an example, in the year 1941, the carriers in the Eastern District originated 20,771,864 tons which was 20.74 per cent of the total Products of Agriculture, carloads, originated in the United States. The freight revenue derived from the transportation of Products of Agriculture in the Eastern District for the year 1941 was $139,173,448.00, which was 23.72 per cent of the total revenue derived from the transportation of Products of Agriculture by all roads in the United States. The Products of Agriculture tonnage originated by the Eastern District represents 3.98 per cent of the total tons of all traffic origi-

nated in that district and the revenue received from the transportation of Products of Agriculture by the roads serving the Eastern District represents 7.02 per cent of the total revenue received for the transportation of all freight by carriers serving the Eastern District. This Exhibit, as did the previous Exhibits, shows the variation in the composition of the traffic from year to year, not only for the carriers as a whole, but also for the various districts into which the United States has been divided by the Commission. As previously stated, we are dealing with large figures so that the variation of one per cent means a material change.

By Chairman Aitchison:

Q. Mr. Hodkinson, your business is to make exhibits [fol. 748] of this sort, is it not?

A. Among other things, yes.

Q. You make up hundreds of them in the course of a year, do you not?

A. Yes.

Q. Why did you not comply with the request of the Commission, and the rules of practice, with respect to the preparation of exhibits?

A. Well, we have endeavored to do so, Mr. Chairman, except perhaps——

Q. Well here you have given us one exhibit, for example, of nearly 200 pages, with no index in it whatsoever.

A. The index is on the title page, Mr. Chairman, and then on page 35 of the exhibit we also have a very comprehensive index, of all the particular points that are covered.

Q. There is nothing, however, to refer anybody who happens to examine the exhibit, to page 35, that I can see.

A. Except, Mr. Chairman, that Section 7 is a statement of the examples, and on the title page of the exhibit we say "See Sheets 35 to 191." Looking then at page 35, which is the very first sheet that one would have to refer to, it shows the index.

Q. Sheet 35 may be an index, but it is buried in the exhibit, and it has taken a considerable amount of the time of everybody here to get that exhibit properly identified in [fol. 749] the record. If you had complied with our re-

quest, and with the rules of practice, it could have been done in less than 10 minutes.

A. Mr. Chairman, let me assure you that we will do our very best in the future.

Chairman Aitchison: I am sure you will. Does that conclude the statement of the witness on direct, Mr. Healy?

Mr. Healy: Yes, sir.

Chairman Aitchison: Is there any cross examination? (No response.) If there is no desire to cross examine you, Mr. Hodkinson, you are excused.

(Witness excused.)

Mr. Healy: At this time I offer the exhibits identified by Witness Hodkinson, in evidence.

Chairman Aitchison: Without objection, they are received.

(Exhibits 47 to 57, both inclusive, Witness Hodkinson, received in evidence.)

Mr. Healy: Call Mr. Tannehill.

W. T. TANNEHILL was sworn and testified as follows:

Direct examination.

By Mr. Healy:

Q. Please give your name and address to the reporter.

A. W. T. Tannehill, 608 South Dearborn Street, Chi[fol. 750]cago, Illinois.

Q. What has been your experience in dealing with traffic matters?

A. I am at the present time a member of the Auxiliary Committee, Central Freight Association. I have been in railroad service for 36 years, in the Operating and Traffic Departments, and about 31 years with the New York Central System, from 1920 in the Traffic Department, in various capacities, including Chief of Tariff Bureau, Division Freight Agent, Assistant General Freight Agent, and General Freight Agent. I have occupied my present position since March 1, 1937.

Q. Have you prepared an exhibit for use in this proceeding?

A. I have.

Q. Please identify it.

A. This exhibit consists of 42 pages. It contains a study of all movements of soda potash from three Central Freight Association origins in Ohio and Michigan, to destinations in Official Territory, showing the present adjustment, and the effect of the Jensen suggested basis upon this movement.

Q. Of how many parts does the exhibit consist?

A. The exhibit has been prepared in parts A to F.

Mr. Healy: May the exhibit be identified at this time as No. 58

[fol. 751] (Exhibit No. 58, Witness Tannehill, marked for identification.)

By Mr. Healy:

Q. Have you prepared a statement, explaining the exhibit?

A. I have.

Mr. Healy: This statement likewise, if the Chairman please, has been distributed to the parties, and I ask that it be treated in a manner similar to the two preceding statements.

By Chairman Aitchison:

Q. Are these commodities such as normally take class rates?

A. In all instances, yes, sir. That was one reason why I took these commodities, because in all instances in Official Territory they take a percentage of the first class rate, without exception.

By Com. Alldredge:

Q. But they are not regular class rates, the rates applying on those commodities, are they?

A. I did not hear your Honor.

Q. I say, the rates that those commodities take are not considered as regular class rates, are they?

A. They are Class 22½, and Class 20; by exception, 22½ per cent of first class, and 20 per cent of first class.

Q. They are not strictly speaking within this case, then, are they?

[fol. 752] A. As I understand it, Mr. Commissioner, Mr. Jensen's formula has sand, gravel, and everything else but coal and iron ore, possibly, in it.

Q. You mean here, then, that you have just carried it on to what you consider it to be its ultimate conclusion; is that right?

A. No, sir, not so far as sand and gravel are concerned. This is a study of the movement of soda products, moving on a specific percentage of first class, by exception.

Q. Under the notice of the Commission, and the order of investigation, do you consider these rates to be involved now in this proceeding?

A. So far as Mr. Jensen's Exhibit No. 7 is concerned, yes, Mr. Commissioner, and that is what this exhibit was made up for, to show the effect of Mr. Jensen's suggestions in his Exhibit No. 7.

Chairman Aitchison: Without recalling Mr. Hodkinson for the purpose of this one question, was that also true of any part of his statement, or did his statement relate entirely to the class rates, as such, do you know, Mr. Healy?

Mr. Healy: Mr. Hodkinson had certain exhibits which deal with the movement of paper products and glass containers.

Chairman Aitchison: Do they take class rates, or [fol. 753] exceptions?

The Witness: Exceptions.

Mr. Healy: The witness can answer that.

Chairman Aitchison: The witness says "Exceptions."

The Witness: Yes.

Chairman Aitchison: Mr. Healy requests that this statement also be copied into the record. Is there any objection to that course? (No response.) Hearing none, it may be done.

(The statement is as follows:)

Following compliance by the Official Classification carries with the report and order in I. C. C. Docket 15879, effective December 3, 1931, the Interstate Commerce Commerce Commission then took up the question of Fourth Section Relief and in connection with commodity and exception items, issued denial orders on all old Fourth Section Relief of 1910, 1911, etc., in Fourth Section Order 11752

issued November 22, 1934; this necessitated carriers revising their commodity and exceptions ratings to conform to the class rate relief granted.

Generally speaking, the commodity rates between Central Freight Association Territory on the one hand, and Trunk Line Association and New England Freight Association Territories on the other, were on the McGraham formula basis and commodity rates within Central Freight [fol. 754] Association Territory were specific commodity rates bearing no definite relationship to the class rates, or exceptions items bearing a specific relationship to the class rates with restricted application. The necessary revision was a tremendous task and was a heavy burden to the carriers and shippers over a period of years. At the present time, with some exceptions, the Official Classification Territory carriers have remodeled their rate structures on commodity and exceptions items so as to bring those rates into conformity with the present class rate relief. This conformity to Fourth Section Order 11752 was brought about in the following manner; either by routing of specific commodity rates which were continued in effect so as to conform to the Fourth Section, or the cancellation of commodity rates or the establishment of uniform exception rating for application throughout Official Classification Territory.

Those percentages of the class rate established by exceptions in lieu of existing commodity rates were the result of endless studies and conferences with those interested in the rates. Among the many commodities so treated and placed upon a single level exceptions basis were soda products, namely, bicarbonate of soda, soda ash, caustic soda and sal soda, as named in Items 9000 and 9001, Central Freight Association Tariff of Excep- [fol. 755] tions to Official Classification No. 130-B, Agent B, T. Jones' I. C. C. 3684, and caustic soda in solution in tank cars, as per Item 9001 of this tariff.

The present rating on these commodities is Class 22-½J except caustic soda in solution in tank cars, which is Class 20-J. The Column 22-½J rating represents Class 22-½ increased 10 per cent, March 28, 1938, under Ex Parte 123 with 22½- per cent of first class plus 2 cents in effect March 27, 1938, as a minimum increase. Caustic soda in solution in tank cars rated

Class 20-J by exceptions to the Official Classification, represents Class 20 in effect March 27, 1938, increased 2 cents under Ex Parte 115 as a minimum.

There is a very heavy production of these soda products in Official Classification Territory at such points as Syracuse (Solvay), Niagara Falls, New York, Detroit, Wyandotte and Midland, Michigan, Painesville and Barberton, Ohio, and Saltville, Virginia. All of the traffic moves on the exceptions ratings. In making study and test of the proposal set forth by Mr. Jensen, his Exhibit 7, we believed that a traffic study of the soda product movement would furnish a fair and impartial picture of the present adjustment and the effect on the adjustment of Mr. Jensen's proposal, inasmuch as these soda products all moved on a percentage of class rate. In making this [fol. 756] study we secured the total movement from three origins for the months of September, October and November, 1941, to all destinations in Official Classification Territory. The three origins selected were Wyandotte, Michigan, Painesville and Barberton, Ohio.

Wyandotte, Michigan, is a point in Mr. Jensen's suggested Zone 100 approximately 135 miles west of Cleveland, Ohio, Barberton, Ohio, is a point on the dividing line between the suggested Zones 100 and 105, and Painesville, Ohio, is located in the proposed Zone 105, approximately 35 miles east of Cleveland, Ohio.

I now desire to introduce my Exhibit 58 consisting of forty-two pages (42), setting forth the results of this study. First, I would like to point out that we have deleted the destinations and have shown the origins as A, B and C, not necessarily in the order of my previous mention. It is appreciated that this Exhibit does not cover the entire movement of soda products for the three months period from all of the origins in Official Classification Territory. The study was made using these origins in order that we might get a cross section of how the Jensen proposal would affect actual movements and disturb existing origin relationships. My Exhibit 58 is divided into six parts. Part A, consisting of sixteen (16) pages, is a statement showing the carload shipments of [fol. 757] caustic soda in drums, soda ash and sodium bicarbonate in containers or in bulk from the three origins previously referred to to destinations in Official Classification Territory, for the months of September, October

and November, 1941, showing the number of cars to each destination; the total weight; the present rate; Column 22-½ J, the revenue; the distance; what the Jensen proposed first class rate would be; what 22-½ per cent of the Jensen proposed first class rate would be and the revenue thereunder, and the rate based on an average per cent of the Jensen proposed first class rate, which would result in approximately the same revenue to the carriers as under the existing adjustment.

Each line of Part A represents a destination from the three origins in question. Prior to the increases granted under Ex Parte 115 and Ex Parte 123, 22-½ per cent of first class applied on these soda products since September 1, 1935, at which time the basis was established pursuant to action of the so-called Eastern Commodity Rate Reveision Committee having in hand the readjustment of rates in conformity with Fourth Section Order 11752. Prior to September 1, 1935, generally, 85 per cent of sixth class applied within Central Freight Association territory, or 23.3 per cent of first class. Between Central Freight Association Territory and Trunk Line and New [fol. 758] England Territories rates were on the McGraham formula originally representing approximately 85 per cent of sixth class, using the Chicago-New York rate as a base.

Class 22-½ basis was established September 1, 1935, after something over a year and one-half of conferences with the soda products people, and was as near the then existing level of rates as the carriers could secure commensurate with competitive conditions between producing points and on which the carriers could be assured of a fair share of the tonnage from producing points in competition with other forms of transportation.

Part A of my Exhibit on page 5 shows that from origin A the average weighted haul for a total of 2002 cars was 308.5 miles. The average weighted rate was 21.1 cents per 100 pounds and based upon the Jensen proposal 20.9 cents per 100 pounds would be required to approximate the present revenue. Page 12 of Part A of this Exhibit shows that the average weighted haul from origin B for 2943 cars was 330 miles. The average weighted rate was 21.1 cents per 100 pounds and under the Jensen proposal would be 19.2 cents. Page 16 of Part A of this Exhibit shows that the average weighted

haul from origin C for 1454 cars is 402.1 miles, the average weighted rate 23.5 cents and under the Jensen proposal would be 24.8 cents per 100 pounds.

A grand summary of the movement from the three [fol. 759] origins shows 6399 cars with an average weighted rate of 21.1 cents. The exhibit also shows that instead of the present basis of 22-½ per cent of first class, it would require a basis of 27 per cent of the Jensen first class rates to yield substantially the same gross revenue from the movement of soda products shown. We did not take into consideration Mr. Jensen's suggestion for discount rates in our calculations. It will be noted at the bottom of page 16 the average weights per car of the 6399 car study was 80193 pounds. The Exhibit shows that the lading of many of the cars was only slightly in excess of the minimum weight of 45,000 pounds. The grand total also shows that the revenue for the three months period from those three origins amounted to in excess of $1,000,000.

Part B of this Exhibit is a similar study involving caustic soda in solution in tank cars and shows a total of 1503 cars with an average weight of 112,750 pounds. Part C of this Exhibit, consisting of 15 pages is a breakdown of Part A of the Exhibit covering the study of soda products presently taking Class 22-½J into 25 mile blocks. It shows the total number of cars moving from origins A, B and C to destinations in each 25 mile block; the present revenue and the revenue necessary under the Jensen proposal to approximate present revenue; the increase or reduction in revenue for each 25 [fol. 760] mile block under the Jensen proposal; and the average increase or reduction in revenue per car under the Jensen proposal. Page 1 of Part C is a summary of this breakdown and the balance of Part C is the detail. It will be noted from Page 1 that reductions occuring in all instances up to 350 miles and above 350 miles increases result.

Part D of this Exhibit, consisting of 5 pages, is a similar breakdown of the movement study of caustic soda in solution in tank cars, as shown in Part B of the Exhibit. Here it will be noted that reductions occur up to the 400 mile block but generally the reductions are in the 375 mile and lower blocks. In other words, the break between reductions under the present revenue and the

increases over present revenue approximate the same distance as is shown on Page 1 of Part C of this Exhibit.

Part E of my Exhibit consists of 2 pages, Page 1 is a comparison of the present rates from Barberton, Painesville, Ohio, and Wyandotte, Michigan, to destinations in the study to which there was a movement from two or more of the three origins used. The present rates are compared with the rates under the Jensen formula showing the present relationship of rates as between the origin points and what this relationship would be under the formula. As examples, to Baltimore, Maryland, the present rate from Wyandotte, Michigan, for 589 miles [fol. 761] is 5 cents higher than from Barberton, Ohio, for 413 miles, and this spread would be increased to 7 cents. To Altoona, Pennsylvania, the present rate from Wyandotte for a distance of 399 miles is 3 cents higher than the rate from Barberton for 240 miles. This spread would be increased to 7 cents. To Streator, Illinois, the rate from Pinesville, Ohio, for 414 miles is 2 cents higher than the rate from Wyandotte for 326 miles. This spread would be increased to 5 cents.

Page 2 of Part E of this Exhibit is similar information covering liquid caustic soda.

Part F of this Exhibit, consisting of 1 page, is a breakdown of the movement study shown in Parts A and B divided as to movements within, from and to the Jensen suggested zones in Official Territory and indicates that by far the heaviest movement terminated in Zone 105.

By Mr. Healy:

Q. Was Exhibit 58 for identification prepared by you, Mr. Tannehill, or under your direction?

A. It was prepared both by me, and also under my direction.

Q. Is it true and correct, to the best of your knowledge and belief?

A. Yes, sir.

Mr. Healy: I offer it in evidence.

Chairman Aitchison: Without objection, received.

(Exhibit No. 58, Witness Tannehill received in evidence.)

[fol. 762] Mr. Healy: That is all.

By Chairman Aitchison:

Q. The way in which these rates are set up, as going rates, you can change these percentages, can you not? If the class rates were to be changed, to which the percentages apply, and you were not satisfied with the result of continuing to apply the existing exception percentage rates, there is nothing that you know about that would prevent you from filing a tariff, effective on 30 days' notice, which would change that percentage, is there?

A. No, sir; and on page 16, of Part-A, I show that in order to get approximately the same revenue, we would have to go to 27 per cent of the first class rate, instead of 22½; and again, on Page 3 of Part B, it shows, for class 20 traffic, where we would have to go to 22 per cent, to get the same revenue.

Q. Now, let us go to Page 16-A, if you will, kindly.

A. Yes.

Q. You are charging now 22½ per cent of the present first class rate. What would be the percentage of first class that you then would charge, if you were to charge the normal classification rating?

A. Subject to correction, I believe that soda products are fifth class and sixth class, some fifth class, and some sixth class. I do not have the classification before me.

[fol. 763] Q. Well then, am I to understand that Part A covers commodities, some of which are rated fifth class, and some rated sixth class?

A. By the classification?

Q. Yes.

A. Yes, sir, that is quite possible.

Q. Well of course I want to find if you know.

A. Without checking the classification, I would not be able to tell you definitely, Mr. Chairman.

Q. Perhaps somebody interested in the product here can give us some advice, with respect to correcting you if you are wrong. Now, fifth class is what percentage of first class?

A. 35.

Q. And sixth class.

A. 27½.

Q. If you were to rerate these products to class 6, you would then have exactly the Jensen formula, would you not?

A. Approximately.

Q. Then you—not need any exception, would you?

A. That is only part of the exhibit, sir.

Q. I understand.

A. The balance of the exhibit shows an entirely different story. The first part of the exhibit simply brings the figures down to where we can see what they mean. Page 1 of Part C shows that there would be heavy re- [fol. 764] ductions in revenue up to 350 miles, under the Jensen formula, even though we were using your figure of sixth class, or using 27 per cent, and heavy increases over that distance; and I call attention on that page to the fact that every mileage block, every 25-mile mileage block up to 825 miles, had during the three months indicated, a substantial movement of cars.

Q. Now what is the significance of the last page of the exhibit?

A. The last page of the exhibit is simply a further breakdown of the study, to show the destinations, the consuming destinations—that is, within what Zone they are—for these cars; or in other words, a movement totally within Zone 100, of 1499 cars; and from Zone 100 to Zone 105, 844 cars; and within Zone 105, 2907 cars. In other words, out of 6300-odd cars, 3700 and better of them terminated in Zone 105, as to the soda products under the first heading. As to liquid caustic soda, out of some 1500 cars, they all terminated in Zone 105, with the exception of about 300 cars, or slightly in excess of 300 cars.

Q. Well, 105 being the important one, your revenue results are not so unfavorable under the Jensen formula, are they,—as shown in Part F?

A. Oh, not as shown by Part F, no, sir, but it shows [fol. 765] further that the heavy movement was into Zone 105, and, as my statement shows, there are other producing points, and heavy producing points, of soda products at Syracuse, Solvay, and Niagara Falls, New York, and Saltville, Virginia, all of which would be in short-haul territory, in Zone 105, and would have an advantage over the longer-haul points, where the Jensen formula is not bringing the rates up to a higher basis. That is shown as the change in relationship in Part E.

Q. It seems to me, if I look at Part F correctly, that if the Jensen proposal were applied to all of the movements which are set forth in Parts A and B, your revenue would actually be increased.

A. If all of the lines would participate equally in the increase, but there would be a reduction in the short-haul territory, in Zone 105.

By Com. Alldredge:

Q. Why did you select these particular commodities?

A. They were selected, Mr. Commissioner, because there was a heavy movement, and because without exception they move on a percentage of the class rates.

Q. Well you have other commodities that do that, have you not?

A. Oh, yes; if we had had the time, other commodities perhaps could have been selected.

[fol. 766] Q. You used these simply for illustration, then, did you?

A. For illustration.

Q. I see.

A. As to what would happen under the Jensen formula for the class rates, particularly where the commodities all moved on a percentage of the class rates.

Q. Well that is assuming that the Jensen formula would be extended to all of these rates; is that not true?

A. As I understood his suggestion, Mr. Commissioner, it was to extend to anything that moved on a mileage scale.

Q. Well you know, do you not, that the exception ratings are not involved in this proceeding?

A. Not as far as Mr. Jensen's Exhibit No. 7 is concerned, no, sir; I did not understand it that way.

Com. Alldredge: Proceed.

Chairman Aitchison: Have you anything further, Mr. Healy?

Mr. Healy: No.

Chairman Aitchison: Cross examine.

Cross-examination.

By Mr. Norman:

Q. Mr. Tannehill, you have included in this exhibit many commodities that move on exceptions rather than on the classification proper, have you not?

A. I have included in this exhibit, caustic soda in drums, soda ash, bicarbonate of soda, and liquid caustic soda in [fol. 767] solution, in tank cars.

Q. All of which moves——

A. On a percentage of first class, by exception.

Q. By exception.

A. Right.

Q. And all of the caustic soda and other soda products move on rates, on an exception basis, exceptions to the ratings in the Official Classification; is that correct?

A. Within Official Classification Territory, yes, sir; and that is all this covers.

Q. You do not cover any interterritorial movement?

A. I do not cover any interterritorial movement beyond the confines of Official Territory, no, sir.

Mr. Norman: Thank you.

Chairman Aitchison: Is there any further cross examination? (No response.) You are excused, Mr. Tannehill.

(Witness excused.)

Chairman Aitchison: We will take a brief recess at this time.

(A short recess was taken.)

[fol. 768] Chairman Aitchison: Come to order, please, gentlemen. You may call your next witness, Mr. Healy.

Mr. Healy: Mr. Flint.

Chairman Aitchison: Raise your right hand and be sworn.

W. S. FLINT was sworn and testified as follows:

Direct examination.

By Mr. Healy:

Q. Please give your name and address to the reporter, Mr. Flint.

A. My name is W. S. Flint. I am a member of the Official Classification Committee, with offices at 143 Liberty Street, New York City.

Q. How much experience have you had in dealing with traffic matters?

A. I have been with the Official Classification Committee since July 1, 1915, and a member for the past nine years. Prior to that time I was secretary and assistant to the Chairman, chief clerk, and so on down the line.

Q. Have you prepared certain documents containing information requested by the Commission?

A. I have.

Q. For use in this proceeding?

A. I have.

Q. Will you please identify them.

A. The Interstate Commerce Commission on July 2nd, [fol. 769] 1940, requested respondents to furnish certain information to the Commission. This information with the exception of the one particular feature dealt with by Mr. Steadwell today, has already been furnished. The Commission, however, has recently requested that such information as has heretofore been furnished, should be furnished at the hearing in this case in the form of exhibits. I therefore present two exhibits one of which is entitled, "Reply of Respondent Carriers in Official Territory to Questions 1, 2, 3 and 4 of the Questionnaire of the Interstate Commerce Commission."

Mr. Healy: May that be marked for identification as Exhibit No. 59, Mr. Chairman?

The Witness: That consists of six pages, that exhibit.

Chairman Aitchison: Exhibit No. 59 is a six-page statement, the first portion of which is Question 1 and answer to Question 1.

(Exhibit 59, Witness Flint, marked for identification.)

The Witness: This exhibit contains slight corrections of the information originally submitted to the Commission, and in addition to reproducing the questions has brought the answer to Question No. 3 up to date. The other exhibit is entitled, "800 Changes in Ratings (or the Establishment of Ratings for Articles not theretofore Specifically Classified) in Official, Southern and Western Classifications made immediately prior to June 1, 1940." This is [fol. 770] a photo reduction of the statement originally submitted to the Commission.

By Mr. Healy:

Q. It consists of 35 pages.

A. 35 pages and a cover.

Q. In the lower left hand corner it has "New York, N. Y., October 11, 1940."

A. That is correct.

Mr. Healy: I ask that that be marked for identification as Exhibit No. 60, Mr. Chairman.

Chairman Aitchison: It may be marked for identification as Exhibit No. 60.

(Exhibit 60, Witness Flint, marked for identification.)

By Mr. Healy:

Q. Have you prepared an exhibit dealing with some features of Witness Jensen's Exhibit No. 7?

A. I have, sir.

Q. Will you identify it, please?

A. It is five-section exhibit consisting of 13 pages. Each section of it shows the number of pages in that particular section.

Q. The first sheet is headed "Analysis of Carload Ratings in Official Classification No. 59, I. C. C.-O. C. No. 59, Effective March 17, 1942"?

A. Yes, sir.

Mr. Healy: I ask that this be marked for identification as Exhibit No. 61, Mr. Chairman.

[fol. 771] Chairman Aitchison: It may be so marked.

(Exhibit 61, Witness Flint, marked for identification.)

Chairman Aitchison: Proceed, Mr. Healy.

By Mr. Healy:

Q. Mr. Flint, have you prepared a statement commenting upon this exhibit?

A. Yes, sir.

Q. Will you present that statement for the record, please?

A. In Chapter XIV, Mr. Jensen suggests that respondents should revise their tariffs to remove the advantage and preference in freight charges at present accorded to straight carload over mixed carload shipments. Apparently, Mr. Jensen's conclusion that the present mixing rules give the straight carload shipper the advantage over the mixed carload shipper is because the mixed carload rules provide for charging any deficit in the minimum weight at the highest rate for any article in the mixed carload. In view of the past history of these mixed carload rules, it is difficult to understand how the straight carload shipper has the advantage. Prior to Consolidated Freight Classification No. 1, December 30, 1919, no general mixing rule was published in either the Southern or Western Classifications. The general mixing rule published effective on that date, briefly stated, provided that articles having a carload rate or rating, except livestock, could be shipped in mixed carloads from one consignor to one consignee and destina- [fol. 772] tion at the carload rate applying on the highest rated article and subject to the highest minimum weight attaching to any article in the load. This mixed carload rule is still effective in the Western Classification. When a general mixing rule was proposed in the Western Classification, it was vigorously opposed, particularly by jobbers in Western territory, and the burden of their opposition was that it gave the mixed carload shipper the advantage over the straight carload shipper; see Consolidated Classification Case 54 I. C. C. 1, 16, wherein the Commission recommended the adoption of this mixed carload rule.

The present general mixing rule in Southern and Official territories is published as exceptions to Rule 10 of those classifications, and provides in substance that each article, in the mixed carload, will be charged its own straight carload rate on its actual weight. This modified rule was published in the exceptions to the Official and Southern Classifications for the reason that the Western carriers did not adopt this modified rule for application in their territory and therefore, publication was not made in the

Classification proper. When this modified mixing rule was proposed for all classifications, it was opposed by Western shippers, particularly the jobbers, and some shippers in both Official and Southern territories. Again the protests were that it gave a further advantage to the [fol. 773] mixed carload shipper over the straight carload shipper. As a matter of fact, in publishing this modified rule in Official territories, it was necessary to except some commodities to overcome objections of certain shipping interests who opposed the application of the modified rule to their particular commodities. Mr. Jensen considers the modified rule less onerous than the one it preceded, but contends that it nevertheless subjects mixed carload shipments to rate penalties which he considers in many cases are wholly unreasonable. In support of his view, he refers to an extreme example of a mixed carload, three-fourths of the loading space in a box car taken up by a commodity the straight carload minimum weight for which is 15,000 pounds and the remaining one-fourth of the space with a commodity the straight carload minimum for which is 40,000 pounds. Under the mixed carload rule in the Western Classification and under the modified rule in the Official and Southern territories, the minimum for this mixed carload would be 40,000 pounds, and as this minimum could not be loaded, the deficit would be at the higher rate charged for the 15,000 pound minimum freight. While Mr. Jensen does not name the commodities which might be shipped in his hypothetical and highly improbable mixed carload, the chances are that the less carload rate on the 40,000 minimum commodity would be lower than the carload rate on the 15,000 pound minimum [fol. 774] commodity and, therefore, would be charged for at actual weight and less carload rate as is permitted under both mixing rules.

If there were any advantage and preference in freight charges heretofore existing in favor of straight carload over mixed carload shipments, the action taken by the rail carriers in Official and Southern territories certainly went a long way in removing any possible preference as may have existed, when, in April, 1940, they made effective the modification of Rule 10, the mixed carolad rule. The fact is, the Official territory carriers have had no serious complaint from shippers about the operation of the revised mixed carload rule now in effect. When this revised rule was

first proposed by interested shippers, they suggested that the minimum weight be the highest provided for any article in the mixed carload and that any deficit be charged for at the lowest rate provided for any article in the mixture. One of the objections to charging for the deficit at the lowest rate provided for any article in the mixture, is that it would permit the shipper to include a very small amount of very low rated freight in the mixture, providing it did not increase the minimum weight, and in that manner, apply a practically fictitious low rate on the deficit. Another objection was that shippers could do this very thing on straight carload shipments where the actual weight was less than the minimum and in that manner, materially re- [fol. 775] duce the carriers' revenue. There was much precedent for charging the deficit at the highest rate as that principle was employed at that time in various specific mixed carloads published in exceptions to the Classifications. The Interstate Commerce Commission had ordered that the deficit be charged for at the highest rate in Ohio Farm Bureau Federation v. Ahnapee and Western Ry. Co., 197 I. C. C. 70, 76; Vitrolite Co. v. A. T. & S. F. Ry. Co., 204 I. C. C. 304 and Fertilizer Between Southern Points, 205 I. C. C. 17. When the proposed revision of Rule 10 was receiving the consideration of the Classification Committees, very little objection was made to the counter proposal to charge for the deficit at the highest carload rate for any article in the shipment. The all important feature to the interested shippers was charging each article at its own carload rate and actual weight. These shippers stated that they would arrange so that there would be few, if any, cars in which deficits would exist, and the absence of complaints against this feature since the revised rule has been in effect would indicate that this has been done. One important carrier made a check on its railroad and ascertained that in not more than two percent of the mixed carload shipments originated and charged for under revised Rule 10 had there been any deficit in the minimum weight.

Mr. Jensen states, on page III of his Exhibit 7, that to [fol. 776] avoid results so indefensible as he points out, the railroads have found it necessary to continue the numerous mixed carload rates with which their tariffs were filled. This statement is not correct. The reason for many of the specific carload mixtures originally published in Consoli

dated Freight Classification No. 1 was that such entries had theretofore been published in the Southern and Western Classifications prior to the time they had a mixed carload rule. The continuation of most of the specific carload mixtures in the Classification today is because the Western carriers did not adopt the revised mixing rule adopted by the Official and Southern territory carriers. As a matter of fact, following the publication of revised Rule 10 in the Official territory, some specific carload mixtures in exceptions to the Official Classification were cancelled and others were permitted to remain in effect because the application of such mixtures in many instances projected into territory where the revised rule did not apply. Since the publication of revised Rule 10, the Western carriers have published a number of specific mixtures conforming to the principles of revised Rule 10. Another reason for continuing specific mixtures is the difficulty in ascertaining whether the revised rule or the specific mixture would make the lower charge. Under these circumstances, it was considered necessary, for the time being, to continue the specific [fol. 777] mixtures to be used alternatively with the carload mixing rule. Any mixing rule is a concession, not a penalty to the shipper. Mr. Jensen's second proposal in Chapter XIV is to reduce the minimum per car charges for relatively heavy and expensive freight. This could, of course, be accomplished by reducing the minimum weights or by reducing the carload rates, or a combination of both. In commenting on the readjustments made by carriers to meet motor truck competition, Mr. Jensen says that in the great majority of cases, the railroads reduced the carload rate rather than the minimum weight, and very frequently they have sought to preserve or even increase their minimum charge per car by combining the reduced rate with an increased minimum weight. It is very apparent that Mr. Jensen considers that the motor truck competitive situation calls as much for reduced minimum weights as for reduced rates. Where circumstances warranted a lower minimum weight on a particular commodity, the carriers have, in many cases, reduced such minimum. Many of the readjustments made in the rail rates or ratings to meet motor truck competition were necessary because the truck rates were lower than the rail rates and a reduction in the rail minima without a reduction in the rail rate would not have

met the competitive situation. There are instances where shippers have opposed reductions in minimum weights on their commodities because such reductions would reduce [fol. 778] the accepted unit of sale. In other cases, shippers, seeking lower rates or truck competitive rates, have offered the carriers an increase in the minimum as such shippers no doubt, were able to load and market the extra amount and were primarily interested in securing lower charges per one hundred pounds. The third proposal in Chapter XIV is "remove the preference in freight charges at present given to carload shipments in large cars over those in smaller cars." Mr. Jensen attributes the reluctance of the railroads to reduce carload minimum weights, in part, to the fact that their cars each year are becoming larger. He criticizes the carriers for building these larger cars in view of the public generally seeking and devising means for distributing goods in smaller lots than formerly and suggests that the rail carriers are disabling themselves from meeting that demand, and in effect are forcing traffic from the railroads to the highways, by increasing the size of their cars.

In speaking of the cars becoming larger, Mr. Jensen, no doubt, has reference to the increase in the number of box cars in the so-called forty foot group. This increase has been gradual over a period of years, and while a number of years ago the thirty-six foot box car was considered the standard, now the forty foot six inch car is the recognized standard length car. This transition has taken place [fol. 779] in the equipment of the major roads in Official territory, and is one of the steps taken by the carriers to reduce unit costs of transportation. Any criticism of the railroad program for construction of larger cars appears to lose sight of the fact that our car supply is so arranged as to handle all traffic offered. If the traffic of the country consisted of merchandise traffic alone the construction of smaller cars, similar to cars developed in some foreign countries, might be an answer to the competitive situation. However, our car supply has been developed to handle peak movements of raw commodities, such as cotton, grain, etc., as well as merchandise traffic in the best and quickest way. If our car supply was devised to meet the merchandise situation alone it would be impossible to handle these raw commodities without a congestion that would obstruct the clearing of so many commodities from the producing areas.

The building of the larger cars has certainly proved extremely fortunate because of the present war conditions. On page 114 of his exhibit No. 7, Mr. Jensen mentions more favored treatment in respect of minimum weights and charges which the railroads give to shipments in larger cars. In making this statement he calls attention to the fact that for many years prior to July 15, 1940, the percentage increases in the minimum weights for cars over thirty-six feet, six inches long, were less than the percentage in- [fol. 780] crease in the cubical capacity of such longer cars. He also says that generally the thirty-six foot minima could be loaded in thirty-six foot cars only with difficulty, if at all, but the forty foot and fifty foot minima could readily be loaded in cars of those respective lengths. Mr. Jensen is mistaken in regard to the loading of minimum weights in thirty-six foot cars. Generally speaking, in the Classification, the minimum weights for light and bulky articles subject to Rule 34 of the classification represent minima that can be loaded into a thirty-six foot car. The application forms for change in the classification or for information furnished by the classification committees to the general public for many years specifically request that there be shown on such application the actual weight of the particular article that can be loaded in a car thirty-six feet in length, eight feet six inches wide and eight feet high, inside dimensions. A space is also shown on the forms for information regarding the dimensions of packages or pieces, the weight per package or piece and the weight per cubic foot. This information is utilized by the Classification Committees together with any additional information which may be submitted, in considering the appropriate minimum weight to be provided. Careful consideration has been given so that the minimum weights provided can generally be loaded in thirty-six foot cars. There are, of course, instances [fol. 781] where the published minimum weights cannot be loaded in thirty-six foot cars. This is particularly true of commodities having minimum weights of 10,000 pounds, as that is the lowest carload minimum weight provided in the classification for any article. There are a number of instances where the same minimum weight applies on the article when shipped set-up and knocked-down or nested and not nested. This condition exists where the interested shippers desire to include the set-up with the knock-down

or the not nested with the nested. In many of these cases, the minimum weights are generally more than could be loaded in a thirty-six foot car of the set-up or not nested articles, but which could readily be loaded when the article was knock-down or nested. The minimum weights provided for other than light and bulky articles, that is articles not subject to Rule 34, in many cases are considerably less than can be loaded in a thirty-six foot car. In the Classification there are many carload minimum weights which are commercial minimums, that is, weights which represent amounts that are commercial units of sale for carload quantities or because of the peculiar conditions inherent to the particular commodity higher minimums cannot be applied. Mr. Jensen's conclusion that there is now preference in freight charges given to carload shipments in large cars over those in smaller cars appears to be based [fol. 782] wholly on the fact that the minimum weights for the large cars are not increased proportionately to the increase in their cubical capacity. However, cubical capacity is not always the controlling factor as to the quantity of freight which may be loaded in a box car. There are a large number of articles subject to the graduated minimums of Rule 34, the loading of which is regulated not by the cubic capacity of the car, but by the available floor space of the car. Representative articles of this character are agricultural implements, machinery, vehicles, and other freight of such a nature that it cannot be double-decked or cannot be loaded so as to occupy the available cubic capacity of the car. With the possible exception of some freak box cars, the cubical contents increase with the increase in length of the cars. This would indicate a possible increase in the weight of the load. However, many articles in their transportation form have certain rigid dimensions which do not lend themselves to the variations of length or cubical capacity. Many articles are of such length that an additional four or five feet in the length of the car does not make it possible to increase the number of articles shipped in the car. This is also true with respect to articles, which because of their overall size, cannot be loaded heavier merely because the cubical capacity of the car is somewhat greater. Mr. Jensen calls attention to the fact that in July, [fol. 783] 1940, the railroads reduced the forty foot minima to the thirty-six foot basis, and this he claims aggravated

what he terms the preference to shipments in large cars. The facts were that the number of thirty-six foot cars with relation to the number of forty foot cars had greatly diminished. The forty foot car became the standard closed car, and, in the majority of cases, when thirty-six foot cars were ordered, forty foot cars were furnished, the result being that the basic minima, subject to Rule 34, had, quite generally applied for some time to shipments in closed cars. Because of the preponderance of forty foot cars, the shipping public demanded that such car and not the thirty-six foot car should be adopted as the car for which the basic minima would apply under the application of Rule 34. In the July 1942 issue of the Official Railway Equipment Register, I. C. C.-R. E. R.-No. 264, there are 863,225 railroad owned class "X" box cars, including Canadian and Mexican roads, and of these, 134,348 or 15.56% were 36 feet six inches or less in length, while 662,751 or 76.78% were over thirty-six feet six inches, but not over forty feet seven inches in length. Beginning at page 117, Mr. Jensen remarks about tariff provisions permitting single shipments to be loaded in more than one car. These tariff provisions are now under suspension by Service Order No. 68 of the Interstate Commerce Commission dated January 30, 1942. [fol. 784] The rail carriers have since the issuance of this order concluded to cancel those Sections of Rule 34 of the Consolidated Classification which permit substitution of equipment and these cancellations have now been published to become effective on October 20, 1942. Chapter XV contains Mr. Jensen's suggested remedies for all the faults he finds in the classifications and in the rate structures. The two principal suggestions in Chapter XV, at least as regards matters discussed in Chapter XIV are substitution of minimum carload charges for the present method of minimum carload weights, and fixing charges than the present method by length.

Mr. Jensen's proposal regarding minimum carload charges is not clear, but his objective seems to be to establish minimum carload charges proportioned to the length of the haul, which are based on the first class rates to be established from point of origin to point of destination, and these charges to be increased in ratio to the increase in the capacity of the cars. In addition to these minimum carload charges, Mr. Jensen suggests that the charges on any carload which exceeds the minimum charges established,

will be subject to a discount applied only to the charges above the minimum charges. The object of these discount rates is to encourage heavier loading. Mr. Jensen's plan is to provide that heavy, high-priced freight may be shipped at a less cost than today. However, if car charges [fol. 785] on heavy, high-priced freight are to be reduced, then in order to preserve carriers' revenue, charges on light and bulky freight will have to be increased. Mr. Jensen, in Chapter XV expresses the opinion that the railroads have needlessly handicapped themselves in the solicitation of business from the public in competition with the highway carriers, and believes there are doubtless many methods within the scope of the law by which the railroads could readjust their tariffs in such a manner as to remove these handicaps. One method he suggests is that outlined in the concurring opinion of Commissioner Porter in Middle Atlantic States, MC, vs. C. R. Co. of N. J., 232 I. C. C. 93. On pages 122 and 123 of Exhibit 7, he briefly summarizes the method outlined in the concurring opinion. However, his restatement does not coincide with the plan described in the concurring opinion. The plan described in the opinion contemplates that the minimum charge should be the lowest charge which the railroads can reasonably afford to make for moving a carload of freight. It is there recognized that it is not possible to say precisely what the minimum charge should be, but for forty foot cars, which it is said are taken as the predominating type in service, a charge equivalent to seventy times the first class rate between points where class rates are governed by the Official Classification and sixty times the first class rates [fol. 786] between points where they are governed by the Southern Classification is assumed to be approximately correct. Under the plan described in the opinion, the charge should be expressed simply as a sum of money and not as a rate per 100 pounds applied to a certain number of pounds. Thus, for thirty-six foot cars, the charge would be twenty per cent less and for fifty foot cars, fifty per cent more than for forty foot cars, to correspond with the differences in the loading capacities of the three groups. The plan cites as an example the fact that the Commission has approved as maxima in Official territory, column 25 rates on Waste Paper, subject to a minimum of 24,000 pounds for thirty-six foot cars and that that basis on shipments from Jersey City, New Jersey, to Philadel-

phia, Pennsylvania, yields minimum revenue of $38.40. The absolute minimum under the plan set forth in the concurring opinion suggested for carload shipments between those points, was $34.72. In addition to the minimum charge, it contemplated that a discount in the charges on any given shipment in excess of the minimum charge should be provided, and concluded that a discount of twenty-five per cent applied only to the charges above the minimum would appear none too great. Mr. Jensen, while he recommends a discontinuance of all carload minimum weights except those for heavy bulk freight which he defines, proposes a substitution of a minimum carload charge uniform for all classes of freight and representing [fol. 787] nearly as can be determined, the least amount for which the railroads in a given rate territory can profitably move, under billing, the smallest box cars in general service today, namely, those from thirty-six to thirty-seven feet in length and with capacity from 2,400 to 2,500 cubic feet. The minimum charge he recommends is: (A) A fixed multiple of first class rate from point of origin to destination, so as to proportion it properly to the length of the haul. (B) Increased in proper ratio for the larger cars; that is, for cars of capacity from 3,000 to 3,100 cubic feet, (the average 40 foot car), the minimum charge should be 25% higher and for cars of capacity from 4,500 to 4,600 cubic feet, (the average 50 foot car), it should be 87½% higher than the 36 foot car. (C) Assessed separately against each car used regardless of the number of cars combined on one bill of lading. Nowhere in his "suggested remedy" does Mr. Jensen indicate the proper or proposed minimum charge per car for application within Official territory, but as his theory contemplates the method outlined by Commissioner Porter, it is presumed that Mr. Jensen considers that the minimum charge should be seventy times the first class rate between points where class rates are governed by the Official Classification. Mr. Jensen does, apparently, concur in the suggestion contained in the concurring opinion of Commissioner Porter, that a discount [fol. 788] of twenty-five per cent should be applied to the charges above the minimum per car charges. Assuming that I am correct in my understanding of Mr. Jensen's reasoning, and not having anything else to go by, respondents have prepared an exhibit to show the effect this minimum charge per car and discount theory would have on

commodities now published in the Official Classification at the carload ratings and minimum weights provided in such Classification, which I now present.

Section 1 of this exhibit is a statement showing the number of carload ratings in each class for the various carload minimum weights published in Official Classification No. 59, I. C. C.—OC No. 59. Section 2 is a statement showing the present 1st, 2nd, 3rd, R26, 4th, 5th and 6th class rates and column 25 and 22½ rates from New York, New York, to Pittsburgh, Pennsylvania. There is no particular significance attached to the fact that this exhibit shows only the rates from New York to Pittsburgh. Any exhibit of more origin or destination points would indicate the same relative effect on the carriers' revenue. This statement also shows the minimum charge per car of seventy times the first class rate; that is $79.80. In addition, it shows the weight necessary to yield this minimum per car charge of $79.80 for each of these classes. Based on Section 1, Section 2 shows the minimum weight as [fol. 789] published in Official Classification No. 59, the rating as published against this minimum weight in such Classification and the number of items subject to that minimum weight and rating; in addition it shows the minimum charges per car based on the present minimum carload weight and carload rate for these nine classes at the minimum weights provided for such nine classes.

Section 3 is a statement showing the effect of Witness Jensen's discount theory applied to present class rates from New York, New York, to Pittsburgh, Pennsylvania, based on the carload ratings and minimum weights published in Official Classification No. 59, I. C. C.—OC No. 59. This section consists of nine pages, each page of which is devoted to each of the major classes covered by Section 2. Section 3 indicates the reductions in per car charges; the discount basis as contrasted with the present minimum car charges based on minimum weight and carload rate. Section 3 does not purport to show the actual loadings of the commodities which are in these various minimum weight and carload rating brackets, but it is needless to say that where the actual loading exceeds the minimum weight, the reductions in per car charges on the discount basis would be greater than shown by this exhibit for each and every one of the combinations.

Section 4 is a statement of cases wherein the Interstate [fol. 790] Commerce Commission has either prescribed or found not unreasonable carload ratings on various commodities, and shows the name of the commodity, citation, average carload weight, minimum weight and rating. It is not possible to estimate the revenue losses that would result from application of discount rates. Many commodities by reason of their nature and of commercial conditions load far in excess of the Classification minimum weights and the discount theory would gain nothing for the rail carriers in the way of additional revenue because of heavier loading, but would result in tremendous losses of revenue. The Commission has prescribed minimum weights far below the average weights and Section 4 of my exhibit is a representative group of commodities treated by the Commission and indicates that the minimum either as published or prescribed was far below the actual average loading.

Section 5 is a statement, consisting of one sheet, illustrating the effect of the Jensen discount plan applied to the average loaded weight of various commodities from and to the points indicated thereon. In each instance reference is shown to decisions of the Commission and the average weight is that stated in the decision.

Mr. Jensen, in proposing a revision of the rate scales, recognizes that the railroads should not be required to sacrifice revenue and in connection with his proposed re- [fol. 791] vision, states that changes in classification ratings should be made to insure that there will be no loss in revenue on the traffic of any commodity. It is his contention that the increase in the Classifications should depend upon what the average haul of the commodity is and how greatly the rates, terminal and line haul elements combined, are to be reduced. If, in adjusting the rate scales, it were possible to change the Classification on commodities sufficiently to preserve the revenues which the carriers derive from the traffic in that commodity as a whole as suggested by Mr. Jensen, respondents know of no method by which they can preserve their revenue if commodities are also to be subjected to minimum per car charges and discounts. It is believed impossible to make further changes in the classification ratings which would preserve the carriers' revenue with respect to any given commodity. In the Classifications, and more particularly in exceptions

thereto and in commodity tariffs, the rating or rate published has a direct bearing on the carload minimum weight for the commodity. The ratings or rates on many commodities have, from time to time, been reduced with an increase in the minimum weight; this by action of the carriers and also by orders of the Interstate Commerce Commission. Therefore, if the minimum per car charge and discounts recommended by Mr. Jensen were put into effect, many of these low ratings and rates which were published [fol. 792] because of heavy loading or increased loading, should be increased.

Mr. Jensen's proposal of minimum per car charges and discounts obviously is only for freight in closed cars. He makes no mention of the treatment to be accorded freight in open top equipment or to tank car freight. Discounts would not encourage heavier loading of freight in tank cars. Rule 35 of the Classification provides generally that liquids in tank cars are subject to a minimum weight computed by multiplying the full shell gallonage capacity of the tank by the weight per gallon of the liquid plus the quantity loaded in the dome. In the Classification, the same carload ratings are generally published for liquids in tank cars as are published for the same liquids in bulk in barrels. The carload ratings in the Classification are the same for open top equipment as they are for the same commodities in closed cars. To adopt the minimum per car charge and discount theory for freight in closed cars only would discriminate against the same freight in open top equipment or in tank cars.

Mr. Healy: Let me ask you one more question, Mr. Flint:

By Mr. Healy.

Q. Were Exhibits 59 to 61, both inclusive, prepared by you or under your direction?

A. Yes.

[fol. 793] Q. Are they correct to the best of your knowledge and belief?

A. They are.

Mr. Healy: I offer in evidence Exhibits 59 to 61, both inclusive, Mr. Chairman.

Chairman Aitchison: Is there any objection to the receipt in evidence of Exhibits 59 to 61? (No response.) Without objection, they are received.

(Exhibits 59 to 61, both inclusive, Witness Flint, received in evidence.)

Chairman Aitchison: Is that all, Mr. Healy?

Mr. Healy: The witness is tendered for cross examination.

Chairman Aitchison: Is there any cross examination?

Mr. Smelker: Mr. Chairman, I would like to get one point cleared up for the record. That is with respect to the last column on the first page.

Mr. Bee: What exhibit?

Mr. Smelker: Exhibit 60. For example, you show there the figures .01 to .02¼, and then a cent sign after it.

By Mr. Smelker:

Q. Does that mean one hundredth of a cent, or are they in cents?

A. No. That whole column is cents. This is a reproduction of a former stencil. That should have been out of the stencil, but they did not take it out. There should be no "cents" sign at all there. The whole column is value [fol. 794] in cents or dollars as the case may be.

Q. Then the decimal refers to dollars?

A. That is right.

Mr. Smelker: That is all.

Chairman Aitchison: Are there any other questions of Mr. Flint? (No response.) If not, you are excused.

(Witness excused.)

Chairman Aitchison: Call your next witness.

Mr. Healy: Mr. Chairman, unfortunately one more witness that we had who was to deal with an accounting question presented by Dr. Edwards could not be here today. We expect him in the morning. I would like the privilege of putting him on at the convenience of the other parties.

Chairman Aitchison: Very well.

Mr. Healy: Thank you.

Mr. Bee: Who is that, Mr. Heywood?

Mr. Healy: I might state that the witness to whom I have referred is Mr. Heywood, and his statement has been circulated to the parties.

Mr. Sullivan: I have a witness, Mr. Chairman.

Chairman Aitchison: Call your witness, Mr. Sullivan.

Mr. Sullivan The witness is approaching the stand.

Chairman Aitchison: Please state on whose behalf this presentation is being made.

Mr. Sullivan: This witness is being presented on behalf [fol. 795] of the Great Lakes Transit Corporation, a water carrier upon the Great Lakes.

Chairman Aitchison: Very well.

Mr. Sullivan: Will the witness be sworn.

W. E. Emblidge was sworn and testified as follows:

Direct examination.

By Mr. Sullivan:

Q. Mr. Witness, will you state your full name, address and occupation for the record.

A. W. E. Emblidge, Buffalo, New York, Vice President of Great Lakes Transit Corporation.

Q. Will you please state your experience in the lake rate and traffic field?

A. For the past two years I have held my present position. Prior to that I was Freight Traffic Manager for three years. Seven years prior to that I was General Freight Agent. Two years prior to that I was Assistant General Freight Agent. From 1928 back to 1921 I held various positions in the traffic department.

Q. Have you a short statement to present on behalf of your principal?

A. I have.

Q. Please proceed.

A. During the present season of navigation, ten ships of our fourteen vessel fleet were requisitioned by the [fol. 796] Government in the interest of national defense and have been removed from the Great Lakes. The only vessels left to us are four ships operating in the Grain Trade from Duluth to Buffalo under the direction of the O. D. T.

Recently the O. D. T. authorized us to yield a portion of the grain cargo space to the transportation of flour and related commodities under a limited operation Eastbound from Duluth to Buffalo, and this has been accomplished under O. D. T. approval. We are also handling Government trucks from Detroit to Buffalo under recent approval of O. D. T. After the present emergency we expect to resume our former normal operations.

The position of our Corporation in this proceeding as to rail and lake, lake and rail or rail and lake and rail rates is that, not being aware of what all rail rates may result from this investigation, we cannot talk definitely with respect to the differential relationship of rail and lake rates to the all rail rates but, if the general level of all rail rates will be fixed at levels closely approaching the present ones, we shall be satisfied with the maintenance of the present differentials.

However, if radical changes are made in the all rail rates, so that the maintenance of our existing differentials may work hardships, we may have to rely upon our rights to ask for relief. It follows that our rates should [fol. 797] be governed by the same classification and exceptions thereto as govern the corresponding all rail rates in order to effect the differentials referred to.

Mr. Sullivan: That concludes our presentation, Mr. Chairman.

Chairman Aitchison: Is there any cross examination? (No response.) You may stand aside.

(Witness excused.)

Mr. Sullivan: Thank you very much.

Chairman Aitchison: Who is next?

Mr. Moore: I am ready, Mr. Chairman.

Chairman Aitchison: Raise your right hand and be sworn.

KENNETH A. MOORE, was sworn and testified as follows:

Direct examination.

The Witness: My name is Kenneth A. Moore, General Traffic Manager, Automotive Council for War Production, Detroit, Michigan. I occupied the same position

with the Automobile Manufacturers Association until April 1, 1942, when the A. C. W. P. took over. Prior to that time I had been employed by the Automobile Manufacturers Association and the previous organization, the National Automobile Chamber of Commerce since June, 1920. Prior to that time I spent 15 years or more with the New [fol. 798] York Central Railroad in various traffic capacities.

The Automotive Counsel for War Production is the wartime organization of the automotive and allied industries, pledged to give their unlimited effort and facilities in aiding all plants in the industry to get out the mass production of war material that will win the war.

The Council has further pledged, on behalf of the entire automotive industry, not only a cooperative spirit in the common task, but complete interchange of mass production information, product improvements, tooling shortcuts, and an exchange of traffic and transportation policies and techniques to the end that members will be thoroughly posted on war traffic developments, governmental decisions and reports, transportation orders and related significant data.

Traffic managers of member companies are 100% absorbed in the many transportation duties required to insure an even flow of war material and prompt distribution of the finished product. Former automobile manufacturers are now engaged 100% in war production. This is shown in recently published data indicating that production and employment in the automotive industry are now substantially above the highest levels ever attained in peacetime. Currently, the industry is producing weapons at an annual rate of 5 billion 400 million dollars. This is 32% ahead of the average rate of production of non-[fol. 799] military items in 1941, the peak peacetime year of the automotive industry. It must be emphasized that current uptrends will continue for many months, barring shortages of material or manpower or other factors beyond the control of the industry.

On August 5, 1941, the Automobile Manufacturers Association stated, in a petition to the Interstate Commerce Commission for postponement or withdrawal of these dockets, that "Traffic departments of the automobile industry, on which the greater part of the extra labor involved in an investigation of this nature would fall," • • • "would have no time to devote to this investi-

gation without hindrance to national defense." All of the statements and predications contained in said petition, which were brief and to the point, have come true.

Numerous new plants have been staffed, requiring the transfer of trained traffic men, thus depleting the regular working force. The Selective Service Act and the increased amount of war work has engaged the personnel of traffic departments seven days a week, with many instances of double shifts and night forces.

In this situation of unlimited demand by the progress of the war, members of the automobile industry may be pardoned for being unable to discern where a general investigation of this kind will have any helpful effect in winning the war.

[fol. 800] Lastly, all our transportation cost during the war period is being borne by the Government. An investigation at this time will doubtless develop a mass of information and statistics on the movement of Government freight which will have no bearing whatever on normal commercial conditions. New industrial plants, branch factories, and assembly plants have been constructed all over the country, without regard to territorial geography or territorial adjustments. Industrial traffic managers have accepted this situation as a war necessity and they have no spare time from their war traffic duties for consideration of post war conditions, which are highly uncertain and entirely unpredictable at this time.

In conclusion, it is obvious that traffic managers of the automotive plants, over 350 in number, scattered from coast to coast and nearly 1000 plants acting as sub-contractors, are not in a position to participate, pro or con, in this proceeding. This then applies with equal force to me, because if the membership has had no time to study the case and present facts, obviously its representative, equally engaged in vital wartime liaison work, is not in a position to draw information from members or to submit testimony which could be subject to cross examination. That is all I have, Mr. Chairman.

Chairman Aitchison: Does that complete your statement?

[fol. 801] The Witness: Yes.

Chairman Aitchison: You may cross examine.

Mr. Bee: If the Commission please, I move that the argument produced by Witness Moore be stricken and put in his brief when he files one.

Chairman Aitchison: That motion is denied. I want to ask you one or two questions, if I may.

By Chairman Aitchison:

Q. You are operating under class rates largely, are you not?

A. At the present time pretty near all the movement is on Government bills of lading.

Q. Well, the traffic is moving on class rates or something based on class rates?

A. I have not studied that, Mr. Chairman. I do not believe that I am able to answer that properly.

Q. Well, you are shipping automobiles that are not moving on Government bills of lading, are you not?

A. Not very many. The majority of the automobiles——

Q. You are shipping some, are you not?

A. Very few.

Q. You are shipping some, are you not?

A. Very few.

Q. You are shipping a few?

A. That is right. I think so. That is correct.

Q. Do they move on class rates?

[fol. 802] A. In some instances, I believe that is correct, and in some instances percentages of the first class ratings, commodity rates, or exceptions.

Q. How long have they been moving on class rates or percentages of class rates, before the war?

A. Well, Mr. Chairman, I must confess that after a year in the war traffic work, I am too foggy on that question to answer it intelligently.

Chairman Aitchison: I see.

By Chairman Aitchison:

Q. When those rates were established that you are paying, were you consulted?

A. I believe the factories were, not the Association.

Q. That is, at the time the rating was put in for automobiles.

A. You mean the classification rating?

Q. Yes, that you pay.

A. I believe for some years there has not been very much moved on the classification rating.

Q. If so, why are you here? Why are you so apprehensive of this investigation?

A. A good many automobile parts, your Honor, move on classification ratings.

Q. I see.

A. The industry, speaking historically, for years, has been attempting to make the classification. We feel that [fol. 803] we have made the classification with respect to automobiles and automobile parts, and we would be very much interested in any proceeding that would tend to upset that classification set up. Those parts move freely all over the country.

Q. What I am getting at is this: You were not consulted when the class rates were made, but you applied for exceptions to the classification too, is that not a fact?

A. Speaking for the Association, that is correct.

Q. Speaking also of the automobile industry, is that not true?

A. I cannot speak for the individual factories.

Q. You do not know?

A. I do not know.

Q. You say, "New industrial plants, branch factories and assembly plants have been constructed all over the country, without regard to territorial geography or territorial adjustments."

A. Yes.

Q. What is going to be done with those plants when the war is over?

A. I am sure I could not answer that.

Q. Is the investment in some of those plants substantial?

A. I believe it is.

Q. Very heavily substantial?

A. Yes, sir.

[fol. 804] Q. Is it the expectation and have the plants been constructed with the evident idea that they are going to be continued in operation after the war?

A. I would not know that, but I doubt it, in many cases.

Q. You think they will be scrapped? I am talking about these plants you have mentioned here.

A. Your Honor, many of those plants were built by the Government and are leased to the firms that are operating them, and I do not believe that the determination of that question with respect to those plants is in the hands of the present operators.

Q Is it the thought that when the war is over they are not going to be operated, or what?

A. I could not say.

Q. Then what did you bring it in for?

A. The purpose of this statement is to show that the traffic managers of the automotive plants are too busy today in war work to participate pro or con in this proceeding.

Q. I ask you to tell me any proceeding which involved class rates or classifications in which they ever have participated pro or con?

A. Not in proceedings, but we are certainly interested, very deeply interested, in any proceeding which involves the classification. I do not believe in my experience there has been an investigation of this kind threatened with [fol. 805] respect to classification.

Mr. McCollester: Mr. Chairman, may I, since the subject of automobiles has been brought up, step out of my role of attorney for the State of New York for a moment and make a statement on behalf of the Chrysler Corporation for whom I am counsel?

Chairman Aitchison: Yes.

Mr. McCollester: The Chrysler Corporation, along with the other automobile manufacturers, is a party to the Commission's investigation, Docket No. 28190, into the rates on automobiles throughout the United States; and the Chrysler Corporation has put at issue in that proceeding the reasonableness of the classification rating of first class on new automobiles, passenger automobiles. Hearings in that proceeding have gone on for a period of about three years. They have been concluded. We have over 5,000 pages of testimony and 495 exhibits. Briefs are due on the 2nd of November, a month from now. Therefore on behalf of the Chrysler Corporation I want to make a motion that so far as there may be any question of the classification rating of individual commodities involved in this proceeding, that question shall not include new passenger automobiles; and that whatever determination be here made, shall be without prejudice to the determination in Docket 28190 of that very question as to which there has [fol. 806] been a great deal of evidence introduced. I am sure the railroads will have no objection to that motion

because they were, of course, parties to that proceeding too.

Chairman Aitchison: 28190 probably will be decided before this case will be.

Mr. McCollester: I do not know about that. It is further along. That is correct.

Chairman Aitchison: With normal diligence on every one's part, it will be.

Mr. McCollester: I make that statement because Chrysler has not introduced any evidence here for the reasons given by Mr. Moore and also because the matter has been gone into with great ful-ness in Docket 28190, the classification of new passenger automobiles.

Chairman Aitchison: In Docket 28190 is it going to be necesary to have these busy traffic managers?

Mr. McCollester: The record has been closed, Mr. Commissioner. Otherwise it would be impossible to take further testimony in 28190.

Chairman Aitchison: There is no motion to reopen or anything of that sort?

Mr. McCollester: No, there is not.

Chairman Aitchison: The record is complete?

Mr. McCollester: The record is closed.

Chairman Aitchison: It is satisfactory, is it?

[fol. 807] Mr. McCollester: The record was satisfactory when it was closed. Whether it will have anything to do with the state of affairs which would exist when the Commission's order comes out, remains to be seen, but we are submitting briefs on the record as made a month from now.

Mr. Norman: You are asking for an order too, are you not?

Mr. McCollester: We are.

By Chairman Aitchison:

Q. With respect to your statement on sheet 3 to which I just referred, Mr. Moore, are you only talking there about automobile plants and plants making parts for automobiles?

A. No. We are talking about war material plants.

Q. Some of those investments run up into the hundreds of millions, do they not?

A. Yes.

Q. Mr. Moore, do you not know that it is intended they shall endeavor to operate after the war?

A. There may be the endeavor. I do not know that it can be done, or that anybody believes it can be done or is sure it can be done.

Chairman Aitchison: I just want to suggest that with respect to those plants, the rate structure after the war might be an extremely important factor in determining whether they are going to be junked, or continue to operate. [fol. 808] How can that be determined? Perhaps some of you gentlemen who are interested, might spend a little time on it. Are there any other questions of Mr. Moore? (No response.) You are excused.

(Witness excused.)

Chairman Aitchison: Mr. Hughes.

Mr. McCollester: Mr. Chairman, will you rule on my motion?

Chairman Aitchison: No. We will just note it on the record.

Mr. McCollester: All right.

Mr. Barron: Call Mr. Stanage.

Chairman Aitchison: On whose behalf is this presentation?

Mr. Barron: This is on behalf of the Western railroads in general and the Southwestern lines in particular.

Chairman Aitchison: Excluding Mountain Pacific?

Mr. Barron: Excluding Mountain Pacific, Yes, sir. This docket 28300, I do not understand, involves Mountain Pacific territory.

Chairman Aitchison: It is in the Classification Case.

Mr. Barron: Mr. Stanage will not testify in 28310.

Chairman Aitchison: All right.

Mr. Barron: Be sworn, please, Mr. Stanage.

[fol. 809] B. H. Stanage was sworn and testified as follows:

Direct examination.

By Mr. Barron:

Q. Will you state your full name, address and occupation, Mr. Stanage?

A. B. H. Stanage, Assistant Chief Traffic Officer, St. Louis-San Francisco Railway, Frisco Building, Ninth and Olive, St. Louis, Missouri.

Q. Will you briefly recite your traffic experience, Mr. Stanage.

A. I have been connected with the Frisco Railroad since March 18, 1895, and in the traffic department since the Fall of 1904. During the period prior to Federal control I had charge of rates and divisions in the traffic department. During a portion of the period of Federal control I was in the Short Line section of the United States Railroad Administration, handling short line matters. Upon the conclusion of Federal control I returned to the Frisco in charge of rates and divisions and for about a six-year period prior to 1935 I was in charge of their commerce work. Prior to my present employment as Assistant Chief Traffic Officer, I was employed as Freight Traffic Manager in charge of rates and divisions and the general freight development of the Frisco.

Q. Mr. Stanage, have you made a study of the history of the rates in Western Trunk Line and Southwestern territories?

[fol. 810] A. Yes, sir.

Q. Have you prepared two exhibits which you wish to introduce in this proceeding?

A. Yes, sir.

Mr. Barron: What is the next exhibit number, Mr. Chairman?

Chairman Aitchison: 62.

Mr. Barron: The exhibit bearing the symbol "S-1," we ask to have marked for identification as Exhibit No. 62.

Chairman Aitchison: It may be so marked.

(Exhibit 62, Witness Stanage, marked for identification.)

Mr. Barron: The exhibit bearing the symbol "S-2," we ask to have marked for identification as Exhibit No. 63.

Chairman Aitchison: It may be so marked.

(Exhibit 63, Witness Stanage, marked for identification.)

By Mr. Barron:

Q. Mr. Stanage, were these two exhibits prepared by you or under your direction?

A. Yes, sir.

Q. Are they true and correct to the best of your knowledge and belief?

A. They are.

Q. Please proceed with your testimony in your own way, Mr. Stanage.

A. First, I desire to touch on certain features of the general situation. In the Western Trunk Line and South-
[fol. 811] western Cases the hearings of which ran for years, one of the major issues was that raised by the Commission here, namely, spread in rate levels within and between territories. The initial hearing in the Consolidated Southwestern Cases was held in Guthrie, Oklahoma, on January 10, 1923. The case was submitted on June 19, 1925, and decided April 5, 1927, 123 I. C. C. 203.

The proceedings which resulted in the Twenty-first supplemental Report in the Southwestern Cases, decided November 22, 1934, 205 I. C. C. 601, were largely attributable to the Commission's original report in Western Trunk Line Rates, 164 I. C. C. 1. The latter proceedings grew out of the proceedings in Docket 17000, Part 1, decided July 14, 1926.

In the latter, the Commission expressed the view that "The least favorable condition in the District (Western) so far as carriers' revenues are concerned appear to exist in Western Trunk Line territory." 113 I. C. C. 37.

Chairman Aitchison: Did that not grow out of Ex Parte 87?

The Witness: Yes.

By Mr. Barron:

Q. Proceed.

A. The initial hearing in the Western Class Rate Case began at Omaha, Nebraska, January 25, 1927, and hearings were concluded at Chicago, Illinois, on May 2, 1928. About
[fol. 812] 12,500 pages of testimony were taken and approximately 1,200 exhibits containing more than 12,000 pages were introduced. On May 6, 1930, the Commission handed down its decision, 164 I. C. C. 1.

It will thus be noted that the decisions in the Consolidated Southwestern Cases and Western Trunk Line Class Rate Cases were reached upon evidence submitted prior to 1929. Subsequent to 1929 railroad needs became so acute that the carriers made application to the Commission for horizontal

increases in rates, including those prescribed in the cases cited below:

Ex Parte 103, 178 ICC 539, effective January 4, 1932.
Ex Parte 115, 208 ICC 4; 215 ICC 439; 219 ICC 565; effective April 18, 1935.
Ex Parte 123, 226 ICC 41, effective March 28, 1938.
Ex Parte 148, 248 ICC 545, effective March 18, 1942.

The class rates in effect today in Southwestern and Trunk Line territories reflect the result of horizontal advances authorized by the Commission in recognition of the financial distress of the railroads. Such advances were result of petitions and hearings in the cases previously cited.

Competition of motor carriers which had its inception about 1922 continued at an accelerated pace and became a matter of vital importance to the Western carriers within a [fol. 813] few years thereafter, continuing up to the present time.

During the period of depression, 1929 to 1939 inclusive, and until very recently a number of large Western railroads not only were unable to earn anything for their investors on prevailing rates, but some of them for a period did not even earn their operating expenses.

By petition filed on December 13, 1941, in Ex Parte 148, 248 ICC 545, decided March 2, 1942, effective March 18, 1942, the carriers sought increases in rates to enable them to meet extraordinary increases in expenses resulting from wage increases amounting to $441,000,000, annually and granted under the intervention of governmental agencies.

As a result of this proceeding, Western carriers were permitted only a 3% increase in their rates on agricultural products, whether in the raw or processed, and on livestock, including products of livestock, and commodities of particular importance to them.

A reduction at this time in the class rates, including such column rates as are based upon first class, would deprive them of revenue which the authorized rate advances designed them to have to meet their emergency needs. The present growth in the earnings of the carriers has followed an extended period of generally lean years, 1931-1939, 248 ICC 545, and even of struggle.

The prevailing rates, until recent times did not produce [fol. 814] adequate revenues. It may not be said that present earnings are the result of high rates, but of an unexpected

and extraordinary volume of tonnage induced by the National Emergency. The tonnage of ordinary commercial articles has been greatly curtailed, with severe limitations upon, or even complete stoppage of their manufacture.

The discontinuance of coastwise service has thrown new traffic to the railroads. The Government's demands have brought new tasks and tonnage to the carriers. It is this kind of tonnage, rather than the measure of the rates, that is producing current revenues. This tonnage may disappear as suddenly as it appeared, so far as any one can judge at this moment. Whether the present rates will in themselves be sufficient or what their volume and pattern should be under future conditions cannot now be foretold.

The Office of Defense Transportation has issued orders affecting the loading and handling of merchandise, ODT No. 1, also carload traffic, ODT No. 18. It is reasonable to expect additional orders will be issued from time to time. The situation is changing rapidly and no one can foretell what future changes we can expect.

I will now give a brief history of the several proceedings in which the Commission considered the class rate structure of the Southwest, beginning with the City of Memphis Case, decided May 9, 1916, 39 ICC 256.

[fol. 815] Chairman Aitchison: I do not think we ought to have to sit here and listen to a long recital of cases we ourselves decided. You can refer to the reports and put them in the record in that way.

Mr. Barron: If that is the way the Chairman wants it, that is the way it will be. We want to show the Commission that this adjustment is the result of their own findings, and it is our position it should be left alone and not disturbed at this time.

Chairman Aitchison: Is the witness giving us anything except what can be gotten out of the reports of the Commission, in these pages 3 to 18, inclusive?

Mr. Barron: No. I think it can all be gotten out of the reports of the Commission.

Chairman Aitchison: Then why spend time reading it here?

Mr. Barron: All right. We will skip over that part.

Chairman Aitchison: We will save time if you just refer to the cases themselves.

Mr. Barron: All right.

Chairman Aitchison: You can expect us to take notice of the reports in the cases to which you make specific reference.

Mr. Barron: All right.

By Mr. Barron:

[fol. 816] Q. Which is the first case you desire to call the Commission's attention to where they adjusted rates from the Southwest, Mr. Stanage? Just give the title of the case and the citation.

Mr. Hughes: Mr. Chairman, if I may interpose, would you have any objection to those pages being incorporated in the transcript as though read, without being read?

Chairman Aitchison: Certainly. I do not think we have to duplicate our series of reports in our transcript. This is an abstract, really, of our reports.

Mr. Barron: It is the decisions that make up the history of these rates.

Chairman Aitchison: I understand.

Mr. Barron: We desire to present that here.

Chairman Aitchison: We will have to take notice of those reports when you refer to them.

Mr. Barron: That is right.

Chairman Aitchison: Off the record.

(Discussion outside the record.)

Chairman Aitchison: On the record.

The Witness: The citations to which we wish to refer are as follows: 39 I. C. C. 256; 43 I. C. C. 121; 55 I. C. C. 515; 77 I. C. C. 473; 62 I. C. C. 596; 123 I. C. C. 203; 48 I. C. C. 312; 52 I. C. C. 105; 40 I. C. C. 619; 101 I. C. C. 308; 139 I. C. C. 535; 164 I. C. C. 1; 204 I. C. C. 595; 173 I. C. C. 637; 178 I. C. C. 619; 181 I. C. C. 301; 296 I. C. C. 494; 197 I. C. C. 57; 109 I. C. C. 300; 181 I. C. C. 259; 205 I. C. C. 601; 211 I. C. C. 575; 226 I. C. C. 497; 218 I. C. C. 11; 231 I. C. C. 539.

[fol. 817] By Mr. Barron:

Q. Proceed.

A. Later, following the modification of the class rate scales prescribed in the 17000 Part 2 Class Rate Case by the Sixth Supplemental Report therein, the rates within Docket 21772 Territory—that is, Missouri—were similarly revised

effective to reflect the modified 17000 Part 2 Class Rate Scales and the bridge arbitraries at Memphis and Cairo were eliminated, order dated October 4, 1937, in Docket 21772, etc.

On pages 44 to 66 of Exhibit 62 are shown representative illustrations of the class rates, first, fourth and fifth in effect intraterritorially (a) prior to the first decision in the Consolidated Southwestern Cases shown as just prior to July 13, 1928, (b) rates as amended prior to 21st supplemental report, (c) rates prescribed in the 21st supplemental report as amended, effective April 9, 1937 or later. On pages 3 to 43 of Exhibit 62 similar data is shown of rates in effect interterritorially.

Since the establishment of the Southwestern adjustment filed pursuant to the Commission's decision in the 21st Supplemental Report, effective April 9, 1937, the Southwestern carriers have received no general complaints alleging that any of the class rates are unlawful, unjust, unreasonable, unduly prejudicial or unduly preferential. Neither have [fol. 818] they received any request to change these rates.

Q. In the Commission's notice of January 9, 1940, circulated to the public, in speaking about the class rate structure, they asked the question whether it could be simplified. Have you anything to say about that?

A. Yes. The tariffs would be more simple in their application if the carriers were not required to alternate (a) bridge scales rates (b) combination rates and (c) minimum rates with the specifically published point to point rates which were determined in accordance with the formula.

Experience has shown that it is impossible to publish specific rates to reflect these alternative formulae. It is, therefore, necessary for the tariff user to first determine the specifically published rate and then check the three alternative bases to determine the applicable rate.

It would be of some help if the carriers were granted relief from the aggregate of intermediates provision of the fourth section. Similar relief was granted under supplemental fourth section Order 12844 (237 I. C. C. 7), Supplemental Fourth Section Order 14287, 14633 and Fourth Section Order 13667 (214 I. C. C. 625). These orders applied to carload traffic.

Chairman Aitchison: In what territory?

The Witness: In the Southwest. Of course, some of them were interterritorial.

[fol. 819] By Mr. Barron:

Q. The Commission also asked the question whether a lawful rate structure better suited to existing conditions could be established. What have you to say about that?

A. My answer is no. Under existing changed and abnormal conditions, it would be impossible to prescribe a rate adjustment on class rates that would have a semblance of permanency. In determining a rate adjustment, it is necessary to consider composition and volume of traffic, traffic and operating conditions. The conditions today are not representative of normal conditions. The adjustment must also have regard for the revenue needs of the carriers which no one can prophesy.

Q. The Commission in the same notice also asked whether one rate level or few more closely related rate levels than now exist are lawful and desirable in the territory embraced in docket 28300. What have you to say in answer to that question?

A. Due to dissimilarity in the traffic and transportation conditions, composition and volume of traffic together with the revenue needs of the carriers in the three major rate territories—one rate level is not warranted and would not be lawful or desirable in the territory embraced in Docket 28300.

Fewer and more closely related rate levels are not jus-
[fol. 820] tified. Certainly not under present abnormal conditions. It is impossible to determine proper factors. Present conditions are not normal, they are likely to change at any time for reasons which are obvious. In the circumstances, revision of the existing adjustment now would be ill-timed, unwise and most likely not reflective of conditions that would exist at the time a new basis could be made effective.

Q. In the same order the Commission had several numbered questions, the first of which was the present differences between the levels intraterritorially and interterritorially in and between Official, Southern, Southwestern and Western Trunk Line territories on: A, class rates; and B, rates on all other traffic. Have you made a study to see whether or not you could comply with the Commission's desires there?

A. Yes, sir.

Q. What is the result of it?

A. Dealing with question No. 1 as to A, there is shown on page 1 of Exhibit 63, reference to decisions of the Commission wherein are indicated the differences between the levels of class rates intraterritorially and interterritorially. A complete analysis of the various scales in their entirety shows that the situation reflected by the first class rates is not the same as when consideration is given to the entire class scales. The class mileage rates are reproduced in an [fol. 821] exhibit to be introduced later by another witness.

On pages 4 to 14 of Exhibit 63 are shown comparisons of interterritorial first class rates from representative points to destinations in the Southwest compared with the first class rates in other territories for similar distances. In Column 3 is shown the percentage the Southwestern rates bear to the rates in the other territories.

As to (b) the carriers have found it impracticable to ascertain the average rate level on all other traffic, except on class rates, in the several territories. The inability of the carriers to give the Commission a positive answer is due to the fact that there is no uniform basis of commodity rates. We have no data showing a comparison of all of the commodity rates in the different territories or on all interterritorial traffic. It is impracticable to compile such comparisons. We have made a comparison of normal rates on representative commodities such as coal, oil, sand and gravel, lime and brick, to mention only a few. These rates are shown on pages 20 to 50, in Exhibit 63. Unfortunately, one has strayed off. It is on page 108.

In a few instances truck competitive rates are shown. Note comparison of rates on coal shown on pages 21 to 23, on Exhibit 63. These rates apply from origin mine groups, not merely from the origin points shown. That is the customary method used in publishing coal rates. In many [fol. 822] instances the rates shown have destination group application. In some instances the rates are blanketed back on the destination end due to observance of the Fourth Section. Many of the lime rates, pages 24 and 25 of Exhibit 63 in the Southwest are on an origin group basis so as to keep the rates of competing shippers on a parity. Rates on sand and gravel, pages 26 to 29 of Exhibit 63 in many cases have origin group application. Note too the various scales in effect in the territory shown do not apply for the same distances. We do not have information as to the

movement in the other territories, therefore, we have not made a comparison of rates for equal distances except to the extent shown.

Under these circumstances it was only possible to tabulate representative rates applicable intraterritorially and interterritorially. Then, too, there are situations where commodity rates are in effect in one territory while in the other territory the class rate is applicable due in some instances to no general movement of the commodity. Frankly, the Western carriers have been unable to answer this question in any other way than as here indicated.

In Witness Hobbs' Exhibit 5, comparisons are shown of rates on many commodities applicable between points in the various territories. It will be noted that these scales do not apply for uniform distances. It is possible to make [fol. 823] individual comparisons but impracticable to determine the average rate level on all traffic other than class rates in the three major territories or interterritorially on traffic between the major territories.

The rate comparisons shown on pages 20 to 50 of Exhibit 63 are submitted not as a complete showing but merely as representative and to show the impracticability of making a positive answer. We know of no way whereby this information may be obtained.

Q. What is your answer to the Commission's question No. 2 in their notice of January 9, 1940?

Chairman Aitchison: What is that question?

Mr. Barron: The question is, the method or methods to be used in the construction of interterritorial class rates if more than one rate level is prescribed.

The Witness: The Western carriers are not here advocating any change in the several methods under which the present rates were prescribed, checked out and published. All formulas are exceedingly complicated. Since the present is already in existence, with its imperfections, it might as well be retained. In principle, interterritorial class rates should reflect the traffic and transportation conditions inherent in the service accorded the traffic.

Where the Commission prescribed interterritorial rates that did not reflect the difference in transportation condi- [fol. 824] tions special circumstances surrounding the traffic accounted for the exception, as in Coke Between Points in Central and Illinois Territories, 194 I. C. C. 640.

There should also be taken into account the value of the service, what the traffic will bear, and the revenue needs of the carriers. Consideration must also be given to the composition of the traffic, as a whole, in order that class rate traffic will contribute its proper proportion of the needed revenues of the carriers so that they may be in a position to render adequate, regular, prompt and efficient service, in accordance with the mandates of the Interstate Commerce Act. Due consideration should be given to the transportation, traffic and economic factors within the respective territories through which the class rates are to be applied. There should be no change in the present rates.

The end sought in any adjustment is a lawful rate level made with regard to the traffic and transportation conditions incident to the granting of the service, with due regard to the rates applicable at points where the adjustment borders that of other territories.

It is a basic principle that the freight rate structure should reflect the transportation, traffic and economic conditions surrounding the production, transportation and distribution of commodities. It is necessary to have avail-
[fol. 825] able the differences in the composition of the traffic in various territories.

In 192 ICC 315, decided April 10, 1933, the Commission recognized the principle that class rates in the different territories perform to a considerable extent, different functions. In Official territory, class rates have been applied to the movement of the carload traffic in volume to a much greater degree than in the South.

By Chairman Aitchison:

Q. Is this what the Commission said that you are giving us, or are you paraphrasing it?

A. I have rather paraphrased it. I do not think it is precisely the wording of the Commission. It has been paraphrased slightly.

Q. You refer to it. Is that not enough?

Mr. Barron: Mr. Chairman, it was our thought that in answering these questions it was necessary to indulge in some reference to the Commission's decisions.

Chairman Aitchison: Yes.

Mr. Barron: Where we find language in the Commission's decisions that will support what we are contending

for, we, of necessity, have to use it to the best of our ability.

Chairman Aitchison: Then why not introduce an excerpt from it and refer to the page?

Mr. Barron: It just does not make a good story, if you [fol. 826] just say that so-and-so appears on a certain page, and let it go at that. This is not a quotation from the Commission's language, I will admit it is paraphrased.

Chairman Aitchison: You just paraphrase it and then go on and tell us what our duty is.

Mr. Barron: I hope you do not object to that too much. We will skip that, Mr. Stanage. Do not tell the Commission what they are supposed to do. They are supposed to know.

Chairman Aitchison: As far as the help we get at times is concerned heaven help us if we did not.

By Mr. Barron:

Q. Proceed, Mr. Stanage.

A. Rates on freight are not unlike the price of various commodities in commerce. In that both are subject to the law of supply and demand. Competition between rail cariers themselves, competition between markets and competition between commodities are all potent factors which cannot be ignored by the railroads in the establishment of freight rates. The railroads do not have a monopoly of transportation. It is necessary that the railroads keep a constant check on their rates and the movement of traffic, in order that their rates might be kept adjusted to meet the changing needs of commerce based on the many competitive influences.

The Western Trunk Line formula of determining rates in conjunction with the rate level prescribed does not [fol. 827] reflect the average conditions prevailing in the different rate areas; rather it reflects a super refinement, only the most favorable conditions in the different rate areas. If this theory were carried to its logical conclusion, in assuming reflection of varying conditions along route of movement; it would of necessity make different rates for branch and main line movement, different rates for heavy traffic density lines or lines having greater operating costs account grades, etc., within these same territories. That such a cumbersome method of rate

making would be wholly unworkable is recognized by the Commission in the W. T. L. case 164, 1-250.

The basic scale there prescribed by the Commission, approximates 106% of the Appendix E first class scale prescribed in Eastern Class Rate Investigation. The Commission in that case recognized the need for a higher scale in the New England territory, and in all of the territories in the East it has recognized the need of short and weak lines.

In Eastern Class Rate Investigation, the Commission, at 164 ICC 314, in its preliminary announcement invited evidence on the following question: "Do conditions warrant a single level of class rates throughout Official Territory? If not, what exceptions, territorial or by classes of carriers should be made and by what differences in traffic, transportation, or commercial conditions are such exceptions justified? [fol. 828] Shippers as well as carriers generally agreed that a single level of class rates throughout the territory would not be justified but that there should be certain differences reflecting marked variations in cost of operation and density of traffic, such as those found to exist in Michigan and New England."

The Commission did not prescribe one level of class rates for application throughout Official territory. Many factors are taken into consideration and the rate or rating finally determined by the exercise of informed judgment.

In other words, were the laminated formula to be strictly applied it would necessarily follow that it would have to be laminated for the haul in the New England territory and again laminated for the hauls west of the Illinois-Indiana State Line. The fact that the structure of rates in effect prior to the 21st Supplemental Report 205 ICC 601, did not conform to the innovation of a laminated formula, did not alter its substance or render it any less reflective of conditions in the different rate areas. Those rates were based on the same fundamental principles except that the basis used averaged the condition in the interest of simplicity while the laminated formula resorted to super refinements.

Distance scales are frequently criticized on the ground that cost of service is not dependent upon distance alone. [fol. 829] That is true when service is viewed in detail, for other factors affect cost, such as grades, curves, cost of construction, weather conditions and density of traffic.

A longer haul may actually be cheaper because of the type of train used than a shorter haul over the same line. Broadly speaking, however, cost of service undoubtedly does increase as distance increases. In considering an adjustment of rates such as are here in issue detailed consideration of cost is impracticable. Otherwise, rates would vary with the line, the train, the day, and the state of the thermometer. Distance at least measures the quantity of service rendered, furthermore distance scales are based on a theory that is readily understood.

Q. The answers to questions 3 and 4 will be made by another witness, is that correct?

A. Yes, sir.

Q. In the Commission's Question No. 5, they want to know the percentage relation between the various rates and between rates on the various classes. What is your answer to that question?

A. The percentage relations between the rates on the various classes in the standard class scales were prescribed by the Commission. The carriers are disinclined to suggest a marked change in relationships which have been in effect for the past several years. Prior to the decision in the [fol. 830] Consolidated Southwestern Cases and Western Trunk Line Class Rates, there was no uniform percentage relation between classes.

On pages 51 to 57, Exhibit 63, are shown excerpts and charts reproduced from decisions of the Commission relating to percentages of first class beginning with the railroad Commission of Louisiana Case decided July 7, 1916, 41 ICC 83. In the Shreveport Case, 48 ICC, the Commission prescribed the following:

Classes:	1	2	3	4	5	A	B	C	D	E
Percentages:	100	85	70	60	48	52	40	35	30	25

The above percentages were approved in Memphis-Southwestern Investigation and I & S 1269 Case, Extension of Memphis-Southwestern scale.

In Consolidated Southwestern Cases decided April 5, 1927, the Commission prescribed the following class percentages:

Classes	1	2	3	4	5	A	B	C	D	E
Percentages	100	85	70	55	38	45	32.5	27.5	22.5	17.5

In the proceedings on reconsideration 139 ICC 536 decided March 6, 1928, the carriers asked that the percentage assigned to fourth be changed from 55 to 60. They further sought changes on the carload classes, fifth, B to E inclusive, as follows:

5: Prescribed, 38; Sought by Carriers, 40. B: Prescribed [fol. 831] 32.5, Sought by carriers, 35. C: Prescribed, 27.5; Sought by Cariers, 30. D: Prescribed, 22.5, Sought by Carriers, 25. E: Prescribed, 17.5; Sought by Carriers, 20.

The Commission approved 40 on fifth and changed C from 27½ to 30, but declined to change fourth or classes B, D and E. As to the latter classes the Commission found that such changes would defeat one of the important ends sought viz: carload class rates on levels suitable for actual movement of carload traffic.

In Western Trunk Line Class Rates, decided May 6, 1930, the Commission prescribed the same percentage relations to first class for application throughout Western Trunk Line territory as in effect within Southwestern territory except that on fifth class the percentage relation was made 37½ while class 40 was in effect in Southwestern territory. In Consolidated Southwestern Cases, 23rd Supplemental Report, on further hearing decided November 22, 1934, the Commission reduced the percentage relation on fifth class from 40 to 37½ so that today the percentage relations to first class are the same in Southwestern and Western Trunk Line territory. In commenting on its action the Commission pointed out that under its decision on further hearing the first class rates were increased intraterritorially for all distances over 25 miles with few exceptions, while the interterritorial first class [fol. 832] rates were somewhat decreased on the average so that with a reduction in fifth class from 40 to 37½ there would be so far as those features were concerned no decrease in the carriers' revenues.

In the latest class rate decision, 266 I. C. C. 497, Western-Southern Class Rates decided April 5, 1938, the Commission approved for application north or westbound the same percentages as in effect in Southwestern and Western Trunk Line territories. It will thus be noted that uniform percentages of first class now apply to intraterritorial class rates within Southwestern and Western Trunk Line territories as well as to interterritorial class rates, except

from Western Trunk Line to Official and Southern territorities. These percentages are shown on page 57, Exhibit 63.

In 164, I. C. C. 314 at page 372, the Commission dealt with the question of percentage relations and recognized that the percentage-column plan would permit a closer and more equitable differentiation in rates. In the 21st supplemental report in Consolidated Southwestern Cases, 26 rate-base scales were required to be published, to be available as further occasion may require or as rates may be voluntarily applied.

There would be no purpose in creating all of these columns in addition to the ten standard classes unless the Commission intended that they should be used. It is the present intention of the carriers to add to these classes [fol. 833] as necessity may require. The publication of exceptions or other rates on these bases have been, therefore, within the framework of the Commission's own structure, rates and apparent design. The carriers do not advocate a change in or a reduction in the number of the percentage columns referred to in the Commission's Question No. 5.

The percentages cannot be reduced on any class without either (a) an increase to one of the higher columns, which may serve to divert the traffic from the rail carriers or from one shipper to another or (b) a reduction to one of the lower columns, which would further reduce rates already depressed because of competition of other transportation agencies with resultant loss in carriers' revenues.

Chairman Aitchison: Before you go on, I would like to ask you a question.

By Chairman Aitchison:

Q. You say that the present intention of the carriers is to add to these classes as necessity may require. That is, the ten standard classes.

A. Yes, sir, not for the purpose of changing the pattern of the ten standard classes, but to facilitate the publication of commodity rates by using a higher percentage of first class than any of those currently in effect.

Q. You call those classes for the purpose of your testimony, do you?

A. That is the way they are published.

[fol. 834] Q. How many clases do they have in Official territory now?

A. I cannot tell you accurately, but I think there must be as many as 40.

Q. Would it surprise you to know that in a case I heard it was developed that there were more than 100 classes?

A. I would not doubt it. I have reference to a truck tariff here——

Mr. Barron: The Chairman is talking about rail rates.

The Witness: Yes. The reason I mentioned the trucks is because we have to meet what they do or keep up with them.

By Chairman Aitchison:

Q. You have classes that differ from one another only by one-half of 1 per cent, do you not?

A. That is correct, yes, sir.

Q. Is that not rather carrying things to an absurdity?

A. It is necesary to establish the rates resulting from the application of those percentages in order to properly take care of industry.

Q. In other words, to get the business?

A. Yes, sir, to meet the competition of other transportation agencies.

Q. Is that process going to go on? Is there any reason why you should stop at one-half of 1 per cent, if necessary, to get the business?

A. Of course, they do not use other than halves, so that [fol. 835] results in some restriction as to the number of classes that we have available.

Q. Well, I think it can be found upon an examination of the tariffs, if I am correct, that even where you have the same percentage, the way the percentages are pinched around, they are virtually different classes.

A. That is correct, but you must understand, Mr. Commissioner, that we have to meet the changing needs of commerce. When shippers present certain facts to us which we think justify some change in the current adjustment or some competitive situation arises, it is necessary for us to meet it, and we naturally establish the basis which will move the traffic having regard, of course for all the various features we must watch like Fourth Section situations, whether the rates are compensatory, and so forth.

Q. You do not need, then, the standard classes, do you?

A. Yes, sir.

Q. You can say "10" or "20" just as easily as you can say "E", can you not?

A. Yes. That is true, but 10 has been in effect in Western territory for almost 50 years, I am sure.

Q. You have urged according to your exhibits here, have you not, that those classes are meaningless because of the differences in percentage relations?

A. No, sir. I will not agree that they are meaningless, [fol. 836] because all of those classes I used—of course, in varying degree.

Q. Take Class A, for instance.

A. Yes.

Q. Throughout how much of the territory does Class A exceed the rate on 5th class?

A. I could not tell you with any degree of accuracy. I have determined that classes below 5th, or 5th and other classes are used. The extent to which they are used, of course, varies, but they are not absolute classes.

Q. Do you not know that Class A runs from higher than 5th class to considerably below it in your territory?

A. I do not know of any situations like that except to meet active competition of some other transportation agency such as barge movement or trucks, because we have the adjustment which was prescribed by the Commission——

Q. Yes.

A. —in the 21st Supplemental Report.

Q. Except for that, you had 5th Class and Class A sometimes equal, sometimes one greater and sometimes another?

A. I think those situations, Mr. Chairman, are just happenstances. By that I mean that our normal adjustment is the one the Commission prescribed in the 21st Supplemental Report in the Consolidated Southwestern Cases. That is departed from due to competitive conditions which [fol. 837] the carriers find it necessary to meet in order to secure a proper proportion of the moving traffic. Now, if it so happens that the situation you mentioned results, it is due to the desire of the carriers to meet the competitive conditions rather than a desire merely to make several 5th Class rates or several Class A rates as such.

Q. Why can you not meet your purposes entirely by fixing, for example, a scale on agricultural products and then letting you make your tariff and say that a certain product will take 97 per cent of the scale and another one will take 105 per cent and so forth?

A. The trouble is, the United States is too big to justify the application of a uniform or standard basis of that kind. Unless one studies the moving traffic, it is difficult to comprehend the competitive conditions developing throughout a large territory as large as Southwestern territory. When competitive conditions justify departure from the standard yardstick that the Commision may have prescribed or the carriers may have set up on a given date, say June 1st, it is necessary in order to move the traffic and meet the competition of other transportation agencies on August 1, for example, to make an exception to that basis and the carriers have to meet the changing needs of commerce.

Q. How do you meet that, by changing your classifi-
[fol. 838] cation, or taking it out and putting it in exceptions?

A. It can be met in several ways. First, a man who wants a reduction could present an application to the Classification Committee, if he so desired.

Q. The Consolidated Classification Committee?

A. Yes.

Q. Of all three territories?

A. Yes.

Q. He would have to get the consent of all three territories?

A. No. He would make application to them, but I do not think they require the consent of the other two, if Western, for example, gets an application.

Q. You do not agree with the gentleman from the South who said that because his rates have interterritorial application, he was not free to change his Southern Classification?

A. I do not wish to take issue with his statement, but I was answering your question.

Q. Yes.

A. About the consideration of the matter by one classification jurisdiction and requiring the applicant to go to all three. By that I mean I know it to be a fact that when a shipper in the Southwest wants an adjustment

in Western territory, he writes Mr. Fyfe about it. He does not at the same time write to the other classification chairmen.

Q. No, but there is to be concurrence of the other car-
[fol. 839] according to the testimony this morning.

A. Yes. I understand there has to be.

Q. Yes.

A. So much for the classification.

Q. All right. Now, you meet it sometimes by a change of classification. I am talking about competition now.

A. Yes.

Q. Sometimes you meet it by taking them out of the classification and making exceptions related to first class.

A. Yes, sir.

Q. Sometimes you do it by making sepecific commodity rates?

A. Yes, sir. You understand, Mr. Chairman, that this country is so large——

Chairman Aitchison: I understand how large the country is.

By Chairman Aitchison:

Q. When you endeavor to meet competition by a change in the classification, Mr. Fyfe has to get the concurrence of the Southern and Official Committees as well if he is going to carry it in the Consolidated Classification, does he not?

A. Yes.

Q. Then does it not mean this, that all three committees pass on the question as to whether there should be a change in classification necessitated by competition in one area?

A. Yes, sir.

[fol. 840] Q. Is there anything cumbersome about that?

A. No, sir. The difficulty is this, that the parties desiring an adjustment might want a revision, let us say, from Fort Smith, Arkansas, to St. Louis. They are not interested in the whole United States situation being changed.

Q. Of course not. Now, that just gets right down to this: What business has that sort of thing got in the classification?

A. It is not in the classification as a practical matter. By that I mean this, that if a shipper in Fort Smith, Ar-

kansas, wanted to ship a commodity to St. Louis, he found that the classsification was 5th Class, for example, and he thought that was too high for his commodity, he would ask the Fort Smith-St. Louis line, one of the lines, or jointly, to establish a commodity rate for him and would present his facts. If the railroads felt that he had a just cause, they would docket it for consideration so his competitors would have an opportunity to review what he was seeking, and if they thought it would be proper, they would establish it. They would establish it in perhaps one of two ways: Either by a commodity rate taking care of the Fourth Section, or by classification exceptions, whichever is the most expedient way and practical way and economic way from the point of view of the mechanics of the change, to put it into effect.

[fol. 841] Q. Leaving the classification intact to be preserved according to the accepted principles of classification?

A. Yes. Our commodity rate adjustment, like I have attempted to explain, is not unlike the practice of all commercial houses in having a price list. I guess that is the proper way to designate it, a price list. If a man comes there and they think they would like to attract him as a customer, or the facts warrant them in making a departure from this basis, they make that departure. I differ with the advocates of a uniform basis of rates throughout the United States either as to classification or as rate adjustment because it will not work, for the simple reason the country is too big.

Q. It does work as to the first three classes, does it not?

A. Yes, but that is merely the classification. The commerce moves on exceptions in commodity rates. It is taken care of in a different way. That, apparently, is what the Commission is attempting to overthrow, and I am telling you, it will not work.

Q. We are just giving an opportunity to gentlemen like yourself to assist us with this problem, although I confess that you do not suggest any particular betterment as far as your own testimony is concerned, except you are going to take these more than 100 classifications and add to them.

[fol. 842] A. We are not here—that is the Southwestern Lines—advocating any change for reasons I thought I outlined. We do not stand on the position that no change is ever justified, but it is not justified at the moment because

of the conditions with which we are all acquainted, the war situation and so forth.

Q. You would rather, then, as far as the Southwestern Lines are concerned, that we would get the war over with and get into conditions of peace and in the meantime labor along under the present system, than to try to improve it at this time?

A. Yes. That is practically our view, but we go further: We do not believe there are as many of these so-called imperfections as a lot of people are led to believe. I mean, the men who are actually paying the freight come to us, and when their complaint is justified, we remedy it. To be frank about it, there is a lot of smoke here, but there is not a whole lot of substance to some of the complaints I know about. That is just talking plain. That is the fact. We have traffic departments in the Southwest and the Southwestern Freight Bureau. We hear applications for changes in rates, no matter what the need be based on, the conditions they present, and we decide them one way or the other.

Q. Do you attach any importance to what was testified to by one witness this morning, of his finding so many [fol. 843] different classifications in the book that it was a diffcult matter to tell what the real true rate was?

A. Well, I do not think it was a difficult matter. My criticism of that former situation was this, that a given commodity was classified, let us say, four different ways, primarily or basically because of the different packages in which the shipment was shipped to the public or to the consumer. Now, they had a fine differentiation between packages back in the early classification days.

Q. No. That came after the competition between the shippers themselves became so bitter.

A. I was coming up to that point.

Q. There was a time, of course, when it was a railroad market rather than a shipper's market.

A. Yes.

Q. You could have a broad classification then.

A. Yes.

Q. When things tightened up, each man began scrambling for his fair advantage, is that not a fact?

A. That has something to do with it, but the basic principles of transportation, to my notion, have not been changed. You are handling the traffic by motor truck today in one direction and by railroad in the same direc-

tion and by contract truckers in another direction, or by air, but the underlying principles of transportation, to my [fol. 844] notion, have not been changed much within the last 25 years.

Chairman Aitchison: Answer me two more questions, and I will let you go.

By Chairman Aitchison:

Q. The first is, do you think that competition is the thing which ought to be reflected in classification?

A. No, sir.

Q. The second is: What do you say with respect to the desirability of our aiming toward a classification which will apply to all carriers, all transport agencies?

A. I think that is a desirable thing and I think that it is practical. It is workable, and I would like to see it done.

Chairman Aitchison: We are going to suspend now until tomorrow morning. However, there is one matter I would like to discuss before you leave. When will the carriers be prepared to cross examine Dr. Edwards on his latest exhibit, Mr. McCollester and others who indicated they wished to examine the underlying data? The underlying data is here and is subject to examination. I am informed that no one has asked to see it yet.

Mr. McCollester: Mr. Chairman, I talked to Dr. Edwards about that. He said it would suit his convenience to have the underlying data examined in Washington, because we are putting in all of our time reading what goes on here during the day, reading these exhibits and statements.

[fol. 845] Chairman Aitchison: Dr. Edwards was the first witness called. He is sitting around here waiting. He has other things to do. The data is here. Other people may not find it convenient to go to Washington. Could you reasonably examine his data over the week end so you will — prepared to cross examine him Monday morning, and let him go back?

Mr. McCollester: As far as I am concerned, I can do that. I can let him go and examine these data in Washington. Either one is agreeable to me. Up to now I have been fairly busy.

Chairman Aitchison: That, of course, would split the cross-examination.

Mr. McCollester: I do not know that we will have cross-examination of Dr. Edwards. My purpose and desire in examining his data is not necessarily for cross-examination so much as it is to understand his exhibits and perhaps answer them by way of rebuttal rather than by attempting to cross examine. I cannot tell until after I have examined them.

Mr. Hughes: Mr. Chairman, a group of accountants of the Western Lines have been in session here since this hearing started working on the supplementary exhibits of Dr. Edwards. They have been unable as yet to get to a point where they can say definitely what cross-examination should be made of him, and furthermore, they have had to prepare their own testimony concerning Dr. Edwards' [fols. 846-847] original presentation and they have not yet been able to determine, despite very serious differences, to what extent their own testimony will have to be modified. Apparently the fact that Dr. Edwards has introduced new exhibits itself suggests that there must be some sufficient changes in his original proposal to require a very thorough analysis of this. I am saying that in order to make it clear that the Western carriers are unable to say at this time whether they can cross examine Dr. Edwards at any time within the next week or so. This question, of course, I need not remind the Commission, is one of vital importance to the railroads and is something that requires a very thorough investigation and research in order to know exactly where they are. It suggests to me that we will have to, I think, before the week is out, reach somewhat of a more definite decision on the question of whether or not we will have to ask for a postponed hearing within the discretion of the Commission in order to complete this work and make such amendments to the testimony as now prepared in order that when we do present it, it may be a final job and not an intermediate one.

Chairman Aitchison: Well, I simply wanted to call your attention to the fact that he is here with his working papers and he is waiting. We will suspend until 9:30 tomorrow morning.

(At 5:20 o'clock P. M. September 24, 1942, adjourned to 9:30 o'clock A. M. September 25, 1942.)

[fol. 848]

Hotel Claypool,
Indianapolis, Indiana,
Friday, September 25, 1942.

Met pursuant to adjournment at 9:30 A. M.

Before Division-2 of the Commission

Hon. Clyde B. Aitchison, Chairman of the Commission, presiding.

Hon. Walter M. W. Splawn, Commissioner.

Hon. J. Haden Alldredge, Commissioner.

Present: Paul O. Carter, Examiner, W. J. Koebel, Examiner, T. Leo Haden, Examiner. Mr. John J. Murphy, South Dakota, Mr. George McConnaughy, Ohio, and Mr. W. H. Scott, South Carolina, comprising a cooperative committee of State Commissioners.

Appearances: As heretofore noted and the following additional:

C. L. Denk, Jr., % Fulton Bag & Cotton Mills, Atlanta, Georgia, appearing for Fulton Bag & Cotton Mills.

L. J. Dorr, State Office Building, Albany, New York, appearing for New York State Department of Agriculture and Markets.

PROCEEDINGS

Chairman Aitchison: May we have order, please.

[fol. 849] Mr. Barron: Mr. Stanage.

B. H. Stanage re[illegible]ed:

Mr. Hughes: If the Commission please, the carriers of the Western District ask permission to withdraw Mr. Stanage for the present, in order to present three other witnesses for the Western Carriers. Upon the conclusion of their testimony, we will then resume the testimony of Mr. Stanage.

Chairman Aitchison: Very well.

Mr. Barron: You may stand aside, Mr. Stanage.

(Witness excused.)

Mr. Hughes: Mr. J. A. Brown.

J. A. BROWN was sworn and testified as follows:

Mr. Hughes: If the Commision please, Mr. Brown has prepared his testimony in written form, and it has been

distributed to the parties. I will ask permission at this time that he be allowed to read it into the record. It is very short.

Direct examination.

By Mr. Hughes:

Q. Will you give your name to the reporter please, Mr. Brown, and then proceed to read your statement into the record.

A. My name is J. A. Brown. All of my experience has been in the Traffic Department of the lines presently com- [fol. 850] prising Missouri Pacific System. During the last thirty-two years I have continuously held official positions in the Traffic Department of those lines and I am now Chief Traffic Officer for Guy A. Thompson, Trustee, and vice-president of the corporate lines. In this proceeding I am dealing with the rate situation between points within Southwestern Territory; also, between points in the Southwest and points in other territorial jurisdictions involved in these proceedings. The order of the Commission entered July 29, 1939, institutes an investigation into intraterritorial and interterritorial class rates in Official, Southern, Southwestern, and Western Trunk Line Territories with a view to "determining whether said rates and charges, or any of them, are unjust, unreasonable, unduly prejudicial, unduly preferential, etc."

We are confronted with the fact that whatever the Commission may find, it will take into consideration certain conditions of the country, as those conditions affect, or may affect, the movement of traffic by common carriers. It follows, therefore, that the Commission will necessarily base any findings it shall make upon conditions as they existed on January 9, 1940, or upon conditions such as now exist or upon conditions that conceivably may exist after the termination of the present war.

The carriers on January 9, 1940 were still feeling the [fol. 851] effects of the depression which had prevailed since 1930, and the carriers by railroad were also during that same period confronted with competition by motor trucks in its most acute form, and were also confronted with strong competition on the part of common carriers by water, the latter operating at lower rates than applied to all-rail traffic. Due to this competition the rail

carriers, during this depression period, made substantial reductions in rates in an attempt to retain a share of the traffic. As a result of all this, the general level of class rates, including reductions made in intrastate rates in Southwestern Territory, was generally lower than prescribed by the Commission as reasonable maximum rates.

The Commission prescribed this class rate structure in the Southwest and between points in the Southwest, on the one hand, and points in other territorial jurisdictions here involved, on the other hand, after many years of almost continuous hearings. Therefore, it would seem obvious that if this class rate structure is to be changed, such changes must come out of changed conditions which in and of themselves have some reasonable likelihood of permanence. Dealing particularly with rates within the Southwest and to and from the Southwest, and without going into the financial situation of the rail carriers in detail, it should be stated that the net income of the Southwestern [fol. 852] Lines for the year 1928, the year the class rates prescribed in the Southwestern revision became effective, was greater than during the year 1940, being the year the Commission defined its purpose in instituting this investigation. This situation makes it apparent that rates based on necessities of carriers to enable them to earn fair returns as of January, 1940, should have been on a higher level than they were during the year 1928. From a financial standpoint the year 1929 was one of the best years the rail carriers have ever enjoyed.

Conditions as they exist today are the result of the war and are not the result of any natural evolution of business. Production of consumers' goods, as well as the movement of such goods in commerce, is rapidly declining and the production and movement of heavy goods, generally known as producers' goods, is rapidly increasing. The large increase in existing traffic today is due either to movements made by the United States Government or by contractors engaged in war production. This situation has developed a very heavy tonnage for the railroads. This present abnormal tonnage is temporary and will disappear with the conclusion of the war.

The end of the war will unquestionably mean a sudden stoppage in production of war materials and in consequence a quick drop in the movement of this traffic. No one can [fol. 853] predict how soon consumers' goods will come into

volume production following the end of the war, nor can it now be determined where such goods will be produced. Many of the war-time plants, largely financed by the Government, which have ben constructed over the country for the manufacture of war materials, will with the end of the war begin the manufacture of peace time goods. Just what, or when, or where, this will appear is one of the enigmas of the future. Many of these plants have been and are being located in Southwestern Territory.

The railroads are at present without any basis for estimating either the future source of their tonnage, the character of such tonnage, or the volume upon which they must rely for their revenue. The railroads cannot at this time estimate with reasonable accuracy the cost of the service they will be required to render. The rail carriers cannot at this time determine nor estimate the character nor degree of competition they will have to meet in the post-war period, nor what form that competition will take. We do not know whether there will be a surplus of boats, barges, trucks and pipelines, nor how severe the competition will be, nor to what level it may force rates, nor do we know what effect the development of air transport will have on rail tonnage. To reorganize the rate structure for the future under such [fol. 854] circumstances is to base it upon uncertainties and to apply a treatment which may have no relationship to the actual transportation conditions existing in the period for which it is designed.

The foregoing deals in large measure with the question of whether the Commission or the carriers can at this time secure proper data upon which to fix rate levels for the future. We think it fairly obvious that the Commission does not have before it, and cannot at this time procure, testimony from which it can undertake with confidence to say what change, if any, should be made in existing rates. However, our traffic witnesses will deal with existing rate structures.

In its notice of January 9, 1940, the Commission, in defining somewhat its purpose in instituting this investigation, raised the question of whether there could be established a more simplified and uniform basis of class rates. In the Southwestern revision the Commission prescribed a system of class rates within that territory and, also, prescribed a scale of class rates between points in that territory and points in other territories involved in this proceeding. The

rates between points in the Southwest, on the one hand, and points in Western Trunk Line, Official Territory and Southern Territory, on the other hand, are made by what might be termed laminated scales, somewhat lower than [fol. 855] the scale prescribed for intraterritorial application in the Southwest and somewhat higher than the scales prescribed for intraterritorial application in the other jurisdictions. The interterritorial scales are constructed having regard for the length of haul of the traffic through the lower rated territory. If class rates should be reduced, necessarily the carriers would have to recoup their losses in revenue through increases in commodity rates; this, in order to preserve their over-all reveues. Such increases in commodity rates would tend to handicap the industrial development in the Southwest more than could be offset by any reduction in the class rates.

It has been the policy of Southwestern Lines to make low rates on raw materials into manufacturing plants, and to adjust rates on manufactured products with relation to other points of manufacture, service considered. A uniform level of rates, if established, would adversely affect, if not entirely destroy, such policy because it would then be impracticable to make rates based upon the competition encountered. Uniformity of levels of rates in all territories and interterritorially is not practical. Such uniformity would either make the rates in the Southwest too low or in other lower rated territories too high, and would destroy the ability of producers to meet competition since such a basis would result in advances where they could not be [fol. 856] absorbed and reductions in cases where reductions would not be necessary from a competitive standpoint.

It is our view that the most important factor involved in transportation charges to producer and shipper of goods is the relationship of his rate to that of his competitor. While the interterritorial rates on manufactured articles between the Southwest and the other territories involved are generally on the same level in both directions, there are some very notable exceptions in favor of important articles manufactured in the Southwest. The principle under which the class rates, and rates made a percentage of class rates, are generally on the same scale northbound as southbound, is the result of the laminated interterritorial scales, and establishes a proper relationship. Important exceptions to this general plan are rates on many articles manufactured

in the Southwest where the rates from the Southwest to other territories have been made lower than rates in the opposite direction in order to allow the Southwestern manufacturers and producers to meet competition in other territories.

The class levels, generally, determine the commodity levels on many manufactured articles. Basic commodities like coal, lumber, grain and cotton, and commodities of that character, are not generally fixed with regard to the class [fol. 857] rates, but it stands to reason that if there is a uniform level established on class rates, it will eventually follow that a uniform level would also be established on commodities. If that should take place then the production and movement of certain basic raw materials produced in the Southwest, upon which the Southwest is largely dependent, would be seriously handicapped.

Under the policy of ratemaking in effect in the Southwest and interterritorially there has been a marked development of manufacturing in the Southwest. This in our opinion would not have taken place if the policy had been such as to handicap the manufacturers. It is the belief of the Southwestern Lines that under conditions now existing a change in the existing method of ratemaking between points in the Southwest, and between points in the Southwest, on the one hand, and points in other territories involved in this proceeding, on the other, is not desirable because any such change would necessarily be based upon a condition assumed to take place in the post-war period. We do not believe that any testimony offered at this time would be of value in determining what such post-war condition would be.

Perhaps that ought to be written up somewhat. It might be of some value, but it would not be of controlling value, I should say.

Mr. Hughes: That concludes the direct.

[fol. 858] Chairman Aitchison: Cross examine.

Cross-examination.

By Mr. Bee:

Q. Mr. Brown, on Sheet 5 of the prepared statement of your testimony, you say that if the class rates should be reduced, it would be necessary for the carriers to recoup

their losses in revenue through increases on the commodities.

A. Yes.

Q. Why do you think that there would be any loss in revenue, if the class rates were reduced?

A. Well, the class rates move a considerable volume of traffic.

Q. But if the class rates were reduced, would it not permit industry to develop in the Southwest and thus increase the amount of traffic, and make unnecessary a change in any rate groups?

A. No, sir, We do not agree with that. It would not.

Q. Do you know that your railroad refuses today to make the same rates on edible beans from Oklahoma to Detroit, as you have from Detroit to Oklahoma? If that is the case, is that helping Southwestern industry?

A. I do not know about that particular case, to which you refer, but we do decline in various instances to make the same rate southbound as we do northbound. Take your paper adjustment, for instance. We do not make the [fol. 859] same rates southbound as we do northbound, in order to enable the paper industry to place its paper in Central Freight Association Territory.

Q. I am speaking now, Mr. Brown, of movements in the opposite direction,—that you will not establish the same rate on edible beans northbound, as you do southbound, having a much lower rate southbound than you have northbound.

A. Well as I stated before, I do not know about that particular commodity, edible beans. I have not kept up with the situation, in that particular matter.

Q. Do you know that your railroad, and other southwestern railroads, have refused many requests from a paint industry at Tulsa, Oklahoma, to give them the same relative rates on paint that you give southbound, that you give into Texas, from beyond Oklahoma? If that is the case, is that helping Southwestern industry to develop?

A. I am sorry, but I am not acquainted with the paint situation, either, to which you refer,—the rates on paint northbound as compared with the rates southbound.

Q. Are you advised that your railroads in Oklahoma have refused to reduce the rates on batteries from the Southwest, but have reduced the rates inbound from beyond

the Southwest, and thus permitted manufacturers without the territory to supply the trade?

[fol. 860] A. I do not know about the particular commodity, batteries, that you mention there. I do know about a great many commodities, however, where we have reduced the rates in order to enable you to move business from the Southwest into the East, in order to meet competition in the East, and where it would be to your disadvantage if we reduced the rates intraterritorially, as well as interterritorially.

Q. Except on glassware, would you tell us one commodity, please, upon which the rate from the South to the East is lower than the rate in the reverse direction, Mr. Brown.

A. Well I just spoke of paper, wrapping paper, print paper, and board, which is quite an industry in the Southwest, and which has been built up in the last few years, where we make very low rates on pulpwood into the mills, and where we make very low rates on salt cake, and other raw materials, and where we have made rates into the North on a scale lower than applies southbound, and about which there is complaint from the North at the present time. We make rates from the South into the Northeast lower than the rates southbound, in order to enable our manufacturers to place their paper in that territory in competition with mills up in that territory.

Q. Do you happen to know, Mr. Brown, that you make rates on canned goods into Southern Territory from the North, much lower than the rates from Southern Territory [fol. 861] outbound on canned goods?

A. I do not think that is correct. We make lower rates, and have provided lower rates on canned goods from territory in Southwestern Texas, into Central Freight Association Territory,—Chicago and that territory, lower than applies southbound.

Q. Do you mean on grapefruit juice, and commodities of that kind, that are not produced in the north?

A. I mean on grapefruit juice and canned vegetables, which are produced in other sections of the United States.

Q. I do not know of any canned grape juice—or grapefruit juice that is produced anywhere in the north; do you, Mr. Brown?

A. Canned vegetables, yes.

Q. Canned vegetables.

A. Yes.

Q. Now you also spoke in your prepared statement of some competitive reason for reducing the class rates, less than carload rates, in the Southwest. Did you happen to attend the hearing before the Kansas Corporation Commission, and the Oklahoma Commission, when those rates were reduced?

A. No.

Q. Are you advised that the traffic representatives of your railroad testified under oath that the rates that they were tendering, which were approximately 75 per cent of [fol. 862] the rates prescribed by the Interstate Commerce Commission, were reasonable rates for the territory in which they were offered?

A. No, sir, I am not acquainted with that. I do not know if I follow you completely, but——

Mr. Hughes: Just a moment please, Mr. Brown. I should like, if the Commission please, to object to that question. Counsel is apparently merely undertaking to quote something that somebody is purported to have said, which is unsupported, and concerning which the witness himself is not advised.

Mr. Bee: The witness has made a statement of record here, and I am now merely asking him what his advice is in that connection; that is all.

Mr. Hughes: You asked the witness if he knew about something that some representatives of his company are alleged to have said in some other formal proceeding before two state Commisions.

Mr. Bee: Certainly.

Chairman Aitchison: The objection is overruled.

Mr. Bee: Thank you.

By Mr. Bee:

Q. And you are not advised as to what the reasons were, when those rates were reduced?

Chairman Aitchison: Now he has just said that he does not know anything about it.

[fol. 863] Mr. Bee: Very well.

The Witness: As I stated before, I am not advised with respect to that, and furthermore, I did not follow all that you said.

Chairman Aitchison: That is enough.

Mr. Bee: I will not pursue it.

Chairman Aitchison: There is nothing before the witness.

By Mr. Bee:

Q. Now, those same rates were made applicable interstate—or some of the rates, at least, the rates that were reduced—that is, the class rate level was reduced in the Southwest, and you spoke of that in your statement also, I believe.

A. The reduction in the class rate level in the Southwest?

Q. Yes.

A. Yes.

Q. I presume that you were speaking of what is known as the 213 scale, applicable in the state of Kansas, and applicable in the state of Oklahoma, applicable in southern Missouri, and applicable in a portion of Arkansas, and interstate between those points. I say, I imagine that is what you were speaking of.

A. That is what I had reference to, when I spoke of the rates that have been reduced intraterritorially in the Southwest. Principally, however, those rates were intrastate [fol. 864] rates.

Q. And they apply with like application interstate, do they not?

A. Yes, I think in all instances.

Q. Now then, referring to Sheet 6 of your prepared statement, you make the statement there that class rate levels generally determine the commodity levels on the many manufactured articles. You say "basic commodities like coal, lumber, grain and cotton, and commodities of that character, are not generally fixed with regard to the class rates, but it stands to reason that if there is a uniform level established on class rates, it will eventually follow that a uniform level would also be established on commodities." Will you tell me why that is?

A. Well, I think that it is more or less obvious that what is being sought here is to get reductions in rates, and when

you get them in the class rates, you will then ask for reductions in the commodity rates, and set that up as an argument—set the first reduction up as an argument why you should have the other reduction.

Q. Are you advised, Mr. Brown, that the Interstate Commerce Commission, by proper proceedings, has fixed the same level of class rates for the territory south of the Missouri Pacific Railroad in Kansas and in Oklahoma?

A. Right.

[fol. 865] Q. And has the Commission also, in proceedings lawfully before it, fixed the same level of rates on grain, or on coal, or on lumber, or on salt, or on cement?

A. Not so far, no.

Q. Has not the Commission, in each of those instances, fixed different rates in those two territories, one adjoining the other, although it fixed a uniform class rate in the two territories?

A. Yes, I believe that is generally true.

Q. You think, do you, that because the Commission extended the uniformity to class rates, it would go beyond that——

Chairman Aitchison: That is not necessary.

Mr. Bee: All right, sir. That is all.

By Chairman Aitchison:

Q. You told me that you have a uniform class rate system over this territory, but that you have commodity rates which are different in different directions. Now how can you make that line up with your statement that it stands to reason, if there is a uniform level established on class rates, it will eventually follow that a uniform level will be established on commodities, when you yourself have not had it?

A. I think that will be the tendency, Mr. Chairman; I think the tendency will be, to make a more uniform level, to reduce the class rates to the level of the commodity rates which for instance exists in Eastern Territory, where the [fol. 866] class rates are the commodity rates,—or where the commodity rates are on the class basis. Now that would not follow in all instances, but it certainly would be the tendency, it occurs to me. We have quite a number of com-

modities, a great many other commodities, moving northbound,—chemicals, for example——

Chairman Aitchison: I think you have answered my question.

The Witness: All right, sir.

By Chairman Aitchison:

Q. But is it not the tendency, when you establish commodity rates in one direction, that eventually the commodity rates in the opposite direction will be the same?

A. Absolutely, yes, Mr. Chairman; that is the tendency.

Q. Regardless of whether there is uniformity in the class scales or not?

A. I did not get that.

Q. I say, and that, regardless of whether there is uniformity in the class scale or not.

A. Yes, sir, I think so.

Q. Well then, it is not necessarily true that because there is a uniform level established, as far as class rates are concerned, that fact alone will bring about the establishment of a uniform level, as far as commodity rates are concerned, is it?

[fol. 867] A. Well, may I refer to paper again, Mr. Chairman, for illustration. I know of a complaint—I think there is a complaint before the Commission, where they are trying to get rates on paper southbound, into the Southwest, on the same level on which we make rates from the South into the East, or into Central Freight Association Territory.

Q. Well that does not necessarily depend on whether there is uniformity of the class rates or not, does it?

A. No, sir, it does not, but a uniformity of class rates in both directions, in all territories the same, is necessarily going to force us to get some revenue from some other source than from the class rates. If the class rates are too low in the East, and should be raised to the level of the Southwest, or if they would be too low in the Southwest, and should be raised to the level of the East, the rates would be unnecessarily low in one instance, and unnecessarily high in another.

Q. I do not understand your answer. You have a uniform system of class rates in your territory, have you not?

A. Yes.

Q. Now, what adjustment if any did you make in the commodity rates, in order to get you the necessary revenue?

A. We have a uniform class rate basis in the Southwest, but it has been departed from by exceptions in various states.

[fol. 868] Q. And those were in the way of reductions, were they not?

A. Sir?

Q. Those exceptions were in the way of reductions, were they not?

A. Yes.

Q. Then you did not increase any of your commodity rates in the Southwest, did you, to recoup to yourselves what you lost on your class rates when they were put in on a uniform basis?

A. I am not sure as to that, Mr. Chairman. I do not think we did, but I would not say for sure.

Q. As a matter of fact, your class rates did not reduce your revenue, did they?

A. The class rates that are in effect?

Q. The class rates that were put in in the Consolidated Southwestern Cases did not decrease your revenue, did they?

A. No, sir, but we have had to reduce our class rates in order to recoup to ourselves traffic that was being lost by us to other forms of competition.

Q. They were uniformly too high, then, were they?

A. No, sir, I would not say that they are uniformly too high; I do not think that they are uniformly too high.

Q. Well, shall we say, they were uniformly too high to meet the competition which subsequently developed.

A. Yes.

[fol. 869] Q. They became too high.

A. Yes.

Q. As a matter of fact, it was shown, was it not, by a traffic test which you made, and which you proposed to put into evidence in a court proceeding which I think you instituted, or contemplated instituting, that your revenues were increased? As a result of that traffic test, it was shown that the class rates had increased your revenues, was it not,—And I am now talking about uniform class rates over your territory? Now, is that not a fact?

A. Well, Mr. Chairman——

Q. Now, you can answer that question by yes or no; either that is a fact, or it is not a fact. Answer yes or no, and then explain it.

A. I don't know.

Q. You were not there then?

A. Oh, yes, I was there at that time, Mr. Chairman, but I did not follow that, and I do not know exactly.

Q. Were you in a responsible position with the Missouri Pacific Railroad Company at that time, sir?

A. Yes.

Q. And you did not know about that traffic test being made, or what the result of it was?

A. Yes, I knew that.

Q. What was the result?

[fol. 870] A. Well, if I recall correctly, the result of that traffic test was that our class rates were not too low.

Q. That test showed, did it not, that on the basis of the traffic as it was moving, the effect of the class rates prescribed on the uniform basis by the Commission, was to increase your revenues?

A. Yes.

Q. That is right, is it not?

A. Yes.

Chairman Aitchison: Is there further cross examination of the witness?

Mr. Bee: I just have one or two further questions, if the Chairman please.

Mr. Hughes: If I might interrupt briefly just at this point, Mr. Chairman, if the Chairman will consult Volume 205 of the Commission's reports, in the Consolidated Southwestern Cases, reopened, you will find that the traffic test incorporated into that record, which was made definitely, and not in any haphazard way, as the earlier tests perhaps were made, to which you have referred, showed a loss to the Southwestern carriers of about $5,000,000, and the Commission so found that as the approximate amount that was lost by the readjustment in Docket No. 13535.

Chairman Aitchison: Well, that was after your competition came in, was it not?

[fol. 871] Mr. Hughes: Pardon me, your Honor?

Chairman Aitchison: I say, that was after you met with this other form of competition, was it not?

Mr. Hughes: Well, no, I do not think so, Mr. Chairman. I think you will find that the rates which were prescribed by the Commission itself, as applied to the traffic that moved, produced that loss.

Chairman Aitchison: I know, but if you were not hauling that traffic, and it was going to the trucks, of course, any scale would show a loss. Mr. Bee.

By Mr. Bee:

Q. Mr. Brown, do you, as an officer of the Missouri Pacific Railroad Company, or do any of the Southwestern Lines, have any power over the rates from the Southwest to the Official Territory?

A. I do not know what you mean by "have any" power over the rates." We do not reach Official Territory with our own rails, of course,—except a small part of it.

Q. Can you make the rates into Official Territory? For example, could you make a rate from a point in Oklahoma,—any of the Southwestern Lines—to a point in Michigan?

A. We could not, without the assistance of another railroad, a connecting-line, no sir.

Q. It would require a concurrence on the part of the Eastern lines, would it not, Mr. Brown?

A. Yes.

[fol. 872] Q. And they have the concurrence,—or the power of saying what the rates from the South to the North will be, have they not?

A. Yes.

Q. And that is the only way in which they can be made; that is correct, is it not?

A. Yes.

Mr. Bee: That is all.

Mr. Norman: May I proceed, your Honor?

Chairman Aitchison: Mr. Norman.

By Mr. Norman:

Q. Mr. Brown, I just want to ask you a little bit more about this matter of changing the commodity rates if the class rates are changed. Have you at any time in the past, where you have had a revision of your class rates, changed your commodity rates on heavy-moving commodities? Your counsel says that it cost you $5,000,000 per annum, in one instance, but have you in any instance ever changed

your commodity rates on such heavy-moving commodities as lumber and grain, because of any changes that were made in the class rate structure?

A. Well I think that perhaps this is a correct answer to that question: Technically, we have, yes, sir.

Q. Technically?

A. Yes, sir, because I think that the rates in the East are based on the class rates, are they not? As I recall it, the [fol. 873] rates in the East are based on the class rates.

Q. What rates?

A. The rates from Cairo to the East,—are they not on the class adjustment?

Q. On lumber?

A. On the class basis, I say.

Q. On lumber, I am speaking of.

A. How?

Q. I am speaking of lumber. I do not know what you are talking about.

A. Yes, sir, lumber,—that is what you refer to, I believe.

Q. That was one of them, was it not, where they applied 22½ per cent of first class?

A. I think, as I recall it now,—and I would not be certain about it, but as I recall it, our rates into the East have been held at a certain level by reason of the combination, the class C combination, using the class rates to the East.

Q. I am talking now about intraterritorially.

A. Oh.

Q. Have you ever changed your commodity rates, as the result of changes which you made in your class rates?

A. I would not say that we have not. I believe that we probably have, but I do not know.

Q. You do not know of any such instance, do you?

[fol. 874] A. Pardon me?

Q. You cannot cite any instance, can you?

A. Not generally.

Q. You did not do it even when you were losing the $5,000,000, from changes in your class rates, did you?

A. I didn't get that.

Q. I say, you did not do it even when you lost this $5,000,000 which has been referred to, from the changes in your class rates, did you?

A. Not generally, no.

Q. Well now let us take the other side of it. You have many times made revisions in your commodity rates, have you not?

A. Yes.

Q. Well, as a result of those revisions in your commodity rates, did you make any revision in your class rates?

A. We are continually resisting doing those things that we are called upon to do. We do not favor that character of ratemaking.

Q. So that if you do that in this instance, then, that is to say, if you change your commodity rates because of changes in your class rates, it will be the first time in history that you have ever done any such thing, will it not?

A. No.

[fol. 875] Q. When did you ever do it before?

A. I could not say when.

Q. You do not know of any instance, do you?

A. Oh, I know that it has been done in some individual instances, yes, sir, but I do not recall offhand what they might be.

Q. You cannot cite to me right now any instance in which you ever did change your commodity rates because of changes in your class rates, or change your class rates because of any changes in your commodity rates, can you?

A. No.

Mr. Norman: That is all.

A. (Continuing) I am not able to think of any particular examples of that just at the present moment.

Chairman Aitchison: Is there any further cross-examination? (No response.)

Mr. Hughes: I have just a further question or two on redirect, Mr. Chairman.

Redirect examination.

By Mr. Hughes:

Q. Mr. Brown, did not the Interstate Commerce Commission in the Consolidated Southwestern Cases, prescribe many commodity rates in relation to the class rates which the Commission prescribed in that case?

A. Oh, yes.

Q. Do you happen to recall how many commodity rates [fol. 876] were so prescribed?

A. No, sir; just at the moment I do not recall what they were, or how many there were, but they were made different percentages of the class rates, I know. For instance, vegetables, I believe, were made various percentages of first class.

Q. Now the representative of the Oklahoma Commission has laid great emphasis upon your rates on edible beans northbound, versus the rates on edible beans southbound, from Michigan. Would you regard edible beans as an industrial product, or a manufactured product?

A. Why, no, sir, it is an edible product; it is a food product, an agricultural product.

Mr. Hughes: It is not my understanding, Mr. Chairman, that that commodity is involved in this case. That is all I have.

Chairman Aitchison: Well, it is not my understanding, either, that the commodity rates are in this case, but he has talked about them.

Mr. Hughes: Well, I do not care to engage in any colloquy on the subject, Mr. Chairman.

Chairman Aitchison: The witness discussed them.

Mr. Hughes: And Mr. Bee brought up the subject of edible beans, and I merely wanted to call attention to the point that that is not a manufactured product, which seemed [fol. 877] to be the bone of his contention, so far as I could understand it.

Com. Alldredge: Well, might that not be a processed product?

Mr. Hughes: Edible beans?

Com. Alldredge: Yes. If they were canned, they would be processed, would they not?

Mr. Hughes: Then they would be canned goods.

Com. Alldredge: Well, they would be processed, a processed product, would they not?

Mr. Hughes: They would be processed, but they would no longer be edible beans as such. In other words, they would be canned goods.

Chairman Aitchison: The witness was talking, not about manufactured products, but basic commodities, like coal, lumber, grain, and so forth, and they would fall right into that category.

Mr. Hughes: I will grant you that they may belong to that category.

Chairman Aitchison: That seems to be all.

The Witness: Thank you.

(Witness excused.)

Mr. Hughes: Mr. Capron.

L. R. CAPRON was sworn and testified as follows:

[fol. 878] Direct examination.

By Mr. Hughes:

Q. Mr. Capron, will you please give your full name and address to the reporter.

A. L. R. Capron; Chicago, Illinois.

Q. What is your official position with the Burlington Railroad?

A. Vice president, in charge of traffic, of the Burlington System Lines.

Q. Will you state briefly your railroad experience?

Chairman Aitchison: Will not his qualifications be conceded?

Mr. Bee: Yes, they will be, Mr. Chairman, as far as we are concerned.

Mr. Norman: Yes, as far as we are concerned.

Mr. Hughes: Very well.

By Mr. Hughes:

Q. Mr. Capron, what noticeable effect has the war had upon railroad tonnage in Western Territory?

A. Well, the most noticeable effect has been a very substantial increase in tonnage. However, that began long before our entry into the war. It began with the imminence of an outbreak of hostilities in Europe, and it was further accentuated when war actually broke out in Europe, when we started our own defense program, and when that program kept on expanding until the peak, which came after Pearl Harbor, when we actually got into the war. [fol. 879] I think that the best illustration of that will be found in the net ton-miles, which in the Western District, for the year 1938, were 110,709,957,154. In 1939, that went up to 121,867,978,049. In 1940, it rose still further to

134,594,908,000. In 1941 it went up still further, to 177,478,247,000. In the first five months of the present year, 1942, the figure was 88,073,262,000, which compares with 61,128,426,000, in the first five months of 1941. I do not know of any conditions, or prospects, that existed prior to the outbreak of the war in Europe, that would have given ground for any feeling on our part that we were in for any substantial increase in traffic. We were hopeful for an improvement, but no one expected anything other than a moderate improvement, a normal fluctuation. We did not even know that there would be an improvement; things might have gotten worse. In other words, it seems to me that it is correct to say that practically this entire increase is due to the war.

Q. What would you say are the major differences in the nature of the traffic movement today, and those prevailing prior to 1939?

A. One major difference is the drying up of important items of ordinary commercial traffic, items that constitute a very substantial portion of the revenue of the railroads, such as automobiles—passenger automobiles; all manner [fol. 880] of electrical appliances; household equipment, and miscellaneous gadgets of that kind. Anything, any articles manufactured from iron or steel, or other so-called critical materials, have been drying up, and their place has been taken by war materials of various kind, largely a new class of traffic, moving in substantial volume on land-grant rates. There has been, furthermore, a different distribution of the business. In other words, the new business is not going where the old business went. In other words, these war plants have been spread all around the territory, and particularly since Pearl Harbor, and they have been located, quite apparently, for strategic considerations, or reasons, rather than ordinary economic or commercial reasons, and so that has brought about a different distribution situation. Then of course there is the substantial increase in tonnage that has come because of taking the ships out of service. We have this heavy intercoastal business to handle, that formerly moved by water; and there is also intracoastal business, or west coast traffic, that was formerly moved by water, that the railroads are handling at the present time. Then there is the movement of oil by rail, from the Texas fields, and from Wisconsin, to the

North Atlantic Seaboard, which is in part a substitute for oil it formerly moved from Texas by water, and also in part a substitute for oil that moved from South Milwaukee [fol. 881] to the North Atlantic refineries by water. Now, those are just a few of the major items that have changed, and I think I could go on for quite a while, about the manner in which our traffic has been changed, not only in character, but in volume as well.

Q. Then you do not know at this time when the railroads may have to go on a diet, to overcome that adipose tissue, do you?

A. No, sir, I do not, but it seems inevitable that we are going to have our "morning after."

Q. Do you have any basis upon which to form a judgment concerning the character or volume of tonnage to be carried by the Western Railroads at the conclusion of the war?

A. No, sir, I really have no basis upon which to form any judgment at this time. Of course we know that the war industries will slow down, and undoubtedly a lot of them will go out of existence. At the same time, with respect to others, we have been told that they may be continued permanently as part of a new program of national defense, or national preparedness; and as to others, it is stated that it is expected that they will be converted over into commercial use. That is what others say. Now when I say, that is what others say, what I mean by that is this, that the representatives of some of the present concerns operating plants for the Government, have told us that they [fol. 882] hope to lease those plants from the Government after the war, and go into commercial business in those plants. But that is all speculation, of course, just at the present moment; we do not know what the condition is going to be after the war, or what activities will be premitted. Our traffic in the West has been very materially affected in pre war times by Government planning. We do not know what Government planning may be considered necessary in the postwar period. It may all depend upon who is doing it at that particular time.

By Chairman Aitchison:

Q. There is one factor of change which you have not mentioned, Mr. Capron, that is somewhat important, is it not, and that is the way that you have been, by your own

acts and by the acts of others, getting rid of a lot of your unprofitable branch line operations?

A. It is a fact, Mr. Chairman, that we have gotten rid of some of our unprofitable branch line operations, yes, sir, and we have been very hopeful of being able to get rid of a lot of others; but to date the majority of our cases are still pending.

Q. Well, that does not make any difference, in the case of a lot of the lines that are being taken up, does it?

A. Sir?

Q. I say, that does not make any difference, with a lot of lines that are being taken up, does it?

[fol. 883] A. I am very sorry, Mr. Chairman, but I do not just follow you in that question.

Q. If the Metals Reserve Corporation wants a line, it takes it, does it not?

A. Oh, yes.

Q. Whether the case is pending before the Commission, or not?

A. Oh, that is true, yes, Mr. Chairman, but we have not been requisitioned as yet.

Q. Well you are speaking now, I suppose, only of the experience of the Western Carriers generally, are you not?

A. Well, right at the present moment, Mr. Chairman, I am speaking of—when I said that we have not been requisitionend as yet, I was speaking for the Burlington Railroad.

Q. Yes, but other lines have been, to your knowledge, have they not?

A. Yes.

Q. And have you been cooperating with the Metals Reserve Corporation in that regard?

A. I am not able to answer that question, Mr. Chairman, because I do not know what, if any, negotiations or discussions we may have with the Metals Reserve Corporation.

Mr. J. R. Bell: If you will pardon the interruption, Mr. Chairman, it is the Army and Navy Departments, and the WPB.

Chairman Aitchison: No, but they take it over as the [fol. 884] Metals Reserve Corporation, do they not?

Mr. Bell: I think not, Mr. Chairman. They requisitioned our Promontory branch, and the Army entered into a contract to take it up. I do not know just what the bookkeeping is.

Chairman Aitchison: Well, there may be some doubt about it, but the WPB has a subsidiary corporation which is known as the Metals Reserve Corporation.

Mr. Bell: There is a Metals Reserve Corporation, yes, sir, but our requisition was by the Army and Navy, upon order of the WPB. I do not know just how the Metals Reserve Corporation enters into it, but they do not do the requisitioning.

Chairman Aitchison: Possibly it is upon their recommendation.

By Chairman Aitchison:

Q. But the thing I am trying to get at, Mr. Capron, is as to whether or not this has been going on with the active cooperation of the major lines in the West, and what the effect is going to be when we enter the postwar period.

A. On that subject, Mr. Chairman, I can speak for the Burlington-System Lines only, as to what has been done, and as to that, I will say that we have had abandonment projects under consideration for several years, some of which have been presented, and others of which have [fol. 885] not been presented; but we have simply watched the trend of the traffic, to see whether or not it is going to pick up, with a view to filing abandonment proceedings if it did not pick up; but under these emergency conditions, with the need for rail, undoubtedly we are going to present, and we are at this time presenting, cases for abandonment, with the hope that the need for the rail may have some influence in the decision upon the applications; but of course we are not proposing to abandon any lines that are not a drag on us, that do not represent a loss. In other words, in the language of someone that adequately expresses the situation, we are treating only of the lines that have already *have* been abandoned by the communities that they serve.

Q. Well are you going to the Army and the Navy, or the WPB, or the Metals Reserve Corporation, or whoever it is that does the requisitioning, or that can be induced to requisition, and making suggestions with respect to lines that can be taken up, as part of your plant now in operation?

A. I have no knowledge, Mr. Chairman, as to whether anyone in our Operating Department has done anything of that kind. I know, however, that the Traffic Department has not.

Q. Has, or has not?

A. Has not.

Q. Well, the effect of all of this, if you do get abandonments of that sort, is that you are going to have a more [fol. 886] efficient machine, as far as its relation to traffic is concerned, is it not?

A. To the extent, Mr. Chairman, that we are permitted to abandon lines that we are at the present time operating at a loss, there will be that improvement, yes, sir.

Chairman Aitchison: Continue.

By Mr. Hughes:

Q. Mr. Capron are the freight rates to, from, and in Western Territory today, substantially what they were in 1939, except for the Ex Parte 148 increases of this year?

A. That is true of the rate structure as such, yes, sir. Of course there are continually in progress certain adjustments, always downward, to meet competitive conditions, and some of them came along after 1939; but speaking of the rate structure in general, as a whole, there has been no change, no general change, other than that which was involved in Ex Parte 148.

Q. Would it be the purpose of your railroad, and other Western Railroads, to continue to make current adjustments in freight rates to meet situations as they develop?

A. Yes, sir, that is correct. We could not possibly do business otherwise, because you cannot have a static rate adjustment.

Q. Suppose, Mr. Capron, as Chief Traffic Officer of your railroad, you were called upon at the present time [fol. 887] to fix a rate on a wide group of articles between Omaha, Nebraska, and Cleveland, Ohio, or between Chicago, Illinois, and Denver, Colorado, to become effective in 1944. How would you go about doing that intelligently, and what facts would you use as your base?

A. It could not be done intelligently. In the first place, we do not know what our costs will be in 1944. They are already talking about further wage increases. Furthermore, we do not know what will be the general volume of

traffic that we will be handling in 1944, or the character of the traffic. Then furthermore, there is the other feature that I mentioned a moment ago, with respect to the possibility of further Government planning that might be considered necessary in the postwar period, under postwar conditions,—and we are hopeful that 1944 will be a postwar year. For all of those reasons, you just could not intelligently figure at this time any rate or any setup of rates that would be proper in 1944. There are so many possibilities, that you cannot possibly sit down and say, "Well now, this will be about right." You can sit down of course and say, "If so-and-so happens, why, then, this should be about right," and you could make about seven different guesses, and work out seven different rate structures, and maybe not one of those seven different rate structures would prove out to be proper.

[fol. 888] Chairman Aitchison: Mr. Commissioner Splawn wishes to question the witness.

Com. Splawn: I do not know, Mr. Hughes, whether I correctly understood the purpose of your questions, or whether the witness was saying that it is impossible to forecast any changes in rates, or that the Traffic Departments of the railroads are just abandoning the consideration of a rate structure during the war. In 1944, obviously, rates will be charged, and the Traffic Departments of the rails, I take it, will function normally, at that time with respect to the rates to be charged for rail service. This is my question, now, Mr. Capron: Do not these disturbed conditions call for more careful analysis and consideration of rates and charges, than before these extraordinary conditions broke upon us?

The Witness: Have you finished your question, Mr. Commissioner?

Com. Splawn: I am directing that question to you as the Chief Traffic Officer of your railroad.

The Witness: Yes, I understood that, sir, but I was just wondering whether or not you have finished your question.

Com. Splawn: Yes.

The Witness: I will try to answer it, and give you my opinion in the matter, at least, which is this, that as [fol. 889] far as our general rate structure is concerned, it would seem to me to be inadvisable, under these present conditions, to attempt to make any general revision of

it, or create any general disturbance in it. However, as I say, the Traffic Departments of the rail carriers will continue to function, and they are functioning; they are all very busy these days, handling the many problems that are confronting them, and many of those are rate problems, that grow directly out of the war effort. Any of these things that are necessary to the furtherance of our conduct of the war, or directly connected with it in any way, will be handled, of course. Now they may require some changes, but as I stated at the outset, it would seem to me that the least possible general disturbance or upsetting of business relations, is extremely desirable. In other words, we are having enough things upset today by national conditions with which we are confronted, without going out of our way just voluntarily to disturb our rate adjustments. Now further in that connection, let me just add, I do not mean of course that we should not handle, and handle promptly, any readjustments that are necessary or of importance, in connection with the war effort.

Com. Splawn: Is not the effect of these extraordinary conditions, in the light particularly of your realistic summary, somewhat like this, that in addition to the normal [fol. 890] work—such as forecasting the commercial and traffic situation, and other normal questions, you have confronting you all of these disturbing problems that are incident to the war effort, which make the normal process of forecasting necessary adjustments, just that much more difficult, and does it not necessarily follow, therefore, that more effort, thought and consideration should be given, and must necessarily be given, to the working out of rate patterns and adjustments for the future, than would be necessary if we did not have these extraordinary and unusual conditions?

The Witness: Oh, undoubtedly.

Com. Splawn: The Commission in this proceeding has called upon the respondents to give thought to, and plan for, the normal movement of commerce, and therefore, approaching the problem in that way, does it necessarily follow that you are being interfered with by the Commission? In other words, can we not, and should we not, approach the problem in this way, that what the Commission has done was started when there was no thought of this war? Now that the war has come upon us, it makes

the problem that much more difficult, of course, and even more important, and therefore, is it not in order that we should have all of the cooperation between the Government, industry and the railroads, that can possibly be brought about?

[fol. 891] The Witness: That is always desirable, of course.

Com. Splawn: Particularly in view of these prophecies that are being made, ranging from the most pessimistic, that we will be in bankruptcy a few months, perhaps, after the war is over, to the other extreme, that with the great increase in production that will be necessary to supply a needy world, we will be rolling in wealth,—and the truth, of course, is probably somewhere in between, although now no one can say just what it will be.

The Witness: Yes.

Com. Splawn: Now can we not, in this proceeding, with the benefit of your own vast experience in traffic matters, and that of your associates on other railroads, and in industry, carefully work toward a stable and reasonable adjustment, such as the future conditions which we may have confronting us, may demand, in spite of the fact that we must do some considerable guessing as to conditions following the war? In other words, what I have in mind is this: I think I discern some tendency to consider that we are approaching this problem as litigation, when, the very conditions which you have so clearly recited in your testimony appear as a challenge for cooperation—to work in more of a spirit of compromise, such as perhaps we have never before been able to achieve in this country. We are in the United States of America, and our traffic must move, [fol. 892] from Canada to Mexico, and from the Pacific to the Atlantic; and we realize that nobody wants it to move more freely, or under any more reasonable and just rates, than do you and your associates. I think that is true of all of the counsel and traffic men, and everyone here, that fundamentally, everyone would like to see something constructive achieved, out of this proceeding. Many, however, are apparently beset by fears and misgivings that we may fall into some error which will do more harm than good. Now we can avoid the pitfalls if we all work together, so if we can approach this matter in a spirit of cooperation and compromise, I think we can more clearly analyze the

situation correctly, each putting everything before the other, and recognizing the fact that we will have problems in peace as well as in war that may enable us to do something worth while here. I have said what I have said because I had it on my mind, and I shall comment on the situation no further. These matters have been running through my own mind, and they are the background of any question that I would ask you. I would like to have your reaction to the situation as I have just outlined it.

The Witness: Well, Mr. Commissioner, I wish to assure you that there is no lack of desire on the part of the rail carriers, to cooperate. Naturally, as you say, of course, [fol. 893] we want to see a proper rate structure established, but necessarily, along with that, we have to give you our honest opinion. You referred at one stage of your remarks, to my own vast experience. Well, I have had at least an extensive experience. I know that in World War No. 1, we were not able to predict the conditions that were going to prevail after the war. We do know that we never went back to the conditions that existed prior to the war. Rate adjustments were made to meet changed conditions. It was necessary to make a lot of increases in some cases, but there were some very substantial changes in conditions that no one could predict, and I believe there will be some very substantial changes and conditions that no one can predict now. It is my honest conviction that we are going to see a great many changes in the postwar period, that we cannot possibly foresee at the present time, but whatever those changes may be, I am very sure that we cannot expect to see a restoration of prewar conditions; it just is not in the cards; and therefore it seems to me to be utterly futile to attempt at this time to sit down and figure out a rate adjustment, and say, "Now, this is what is going to be proper after the war is over."

By Chairman Aitchison:

Q. Well, these conditions have been going on for some time, have they not,—these conditions that you are speaking about?

[fol. 894] A. Do you mean, the war conditions?

Q. Yes.

A. Yes, sir.

Q. You have known about them for some time, have you not?

A. About the war?

Q. About these disturbed conditions that you have been portraying here.

A. Yes.

Q. Well all that did not deter you from asking the Commission for a 40 per cent increase in your rates, involving a total change in your rate structure, just a few months ago; did it?

A. No, sir, not when the wages were increased; then we asked for a general percentage increase, on that account; and they are talking now about another wage increase, in addition to that. But that of course did not do any particular violence to rate relations. That was just a question of the general level.

Q. As I understand it, then, your position is that the Interstate Commerce Commission, in this long series of cases which fixed the general basis of rates antedating the war—except the increases in Ex Parte 148—was able to devise a set of class rates which so nicely fitted the disturbed conditions, both those that exist now, brought about by the war, and what you can foresee in the future, [fol. 895] that you suggest that no change be made in them; is that correct?

A. I think, Mr. Chairman, that the rates which the Commission fixed were very carefully considered. I do not think that any rate structure that was ever made, would be proper forever, because it has to be changed, to meet changes in conditions; but just at the present moment, conditions are changing so rapidly, and the rate structure itself is of so little relative importance in these days, compared with many other considerations, that I do think that it would not be the course of wisdom to attempt to work out a new rate structure just at this time, based on—the Lord knows what: What might be proper now would not be proper next year, or the year after. We have had more or less experience in these things. Take in our Western Class Rates Case; we had a rate structure worked out there that I thought was a very good one, and a proper one, under the conditions that existed, and on the basis of the testimony that was presented, although the rates for the long hauls were too low; but that case went along for a period of years, and then by the time we got around to placing

the rates in effect, they did not meet the practical exigencies of the moment.

[fol. 896] In other words, the short-haul rates had been raised and long-haul rates had been reduced. The trucks were just coming into their own. The raises went in where there should have been reductions, and the reductions went in where they did not do any particular good.

Mr. McCollester: Mr. Chairman, since the subject under discussion has been raised by Commissioner Splawn and by yourself, it may perhaps clarify the atmosphere, or at least let your Honors know the point of view of those whom I represent, if I may be permitted to make a very brief statement. In the first place, I may say that I would not do justice to my clients did I not say that I am frankly somewhat disturbed at the questions from the bench which appear to indicate that the rate structure now in existence is in need of a general revision. I know that there are those who are here who claim that it should be revised, but I can assure the bench that there are, from the standpoint of the communities, the states and the shippers, quite as many who feel that the present rate structure under which business has been going on for a great many years, is entirely satisfactory—with some modifications here and there, of course, which can be dealt with individually—and that a great deal more harm than good to the general national economy would be done by a change in the rate structure designed to shift industry from one [fol. 897] section of the country to the other.

So far as this proceeding is concerned, your Honors of course know that the state of New York that I represent together with other northern states has, with others, made representations to the Commission that this proceeding should not go forward now, because your Honors, whatever may be the merits of the contentions of the complaining interests, cannot make a valid order when this proceeding is through. Now, I appreciate, and we all appreciate, as Commissioner Splawn has said, that business must go on. The making of rates during the war has got to go on. That is the function of the traffic managers of the railroads. I do not conceive that the Commission sits as a traffic manager. It is the position of the state of New York that the Commission stands as a body to correct an unlawful situation; that you can make an order if you find the rates unlawful, and it is our view

with all due respect that on a record which could be made here, you cannot find that rates will be unlawful under entirely changed conditions.

I think there is a great difference between cooperating in a voluntary revision of a rate structure, if that be needed, which we deny, and proceedings looking to an order of the Commission which can be predicated only on finding of unlawfulness in existing rates. It is the fact [fol. 898] that, as I see it, such a finding cannot be made here which was our reason for urging that this proceeding should not go on.

Chairman Aitchison: I want to inquire of the witness finally:

By Chairman Aitchison:

Q. How long is it going to take you to make the necessary revisions and when do you anticipate commencing to make them to take care of these new industries and things of that sort that have been dropped in here, there and yonder, as described by Mr. Brown?

A. I am not familiar with the industries Mr. Brown has in the—

Q. You have some on your line.

A. The industries that have been established on our line we are taking care of currently. We always do that. Industries do not locate themselves as a rule without negotiating. That is not true, of course, of war industries that—

Q. When these plants are turned from war to peace, they are not going to be able to go on, on the present basis of rates, are they? They are just going to dry up. Take the $15,000,000 plant at Hastings, Nebraska. Is it going to be able to live on the existing set of rates?

A. I would say no.

Q. When are you going to begin to put in a set of rates [fol. 899] on which it can live?

A. When we know it is going to be doing business. We have no way of telling now whether that plant is going to be doing business after the war, nor do we know where it will expect to do business.

Q. Nor can the lessees or proprietors of that plant know whether they can do business or where they can do business unless they know the rates they are going to have?

A. The rates will be the smallest part of their worry now, because they know if other conditions permit them to do business, or to continue any form of business at that plant, they can get the rates from the railroads that will enable them to do business if such rates can be given to them lawfully.

Q. Those rates cannot be established by you alone, but they have got to be made by you in connection with other carriers, is that not correct?

A. That is right.

Q. When are you going to start making a study as to what is necessary in getting concurrences so as to be able to take care of them after the war? Is there going to be a lag at that time when that plant has to be shut down because of its freight rates?

A. No, sir. We cannot do it now. They are not interested. They do not know where they are at. They do [fol. 900] not know what conditions are going to be.

Q. The Government—

A. We cannot sit down now and formulate any program with respect to that.

Q. The Government is paying the freight rate now and it does not matter what it is as far as the plant is concerned?

A. Well, is that a statement?

Q. I am asking you that question.

A. If it is a question, I should say the Government certainly knows what they are paying. They are after us every day to make adjustments. They are paying a lot of rates that are not in the tariffs.

Q. But you are not making rates for them on the basis of keeping that plant going as a competing plant fairly adjusted with other competing plants, are you?

A. No, sir. We are making rates based on the representations that are made to us by the Government officials as to what rates they want or think they should have. We do not always agree with them 100 per cent, but that is the basis for the consideration. We do not figure that they are competing.

Q. Be frank with me and tell me when it is that you are going to take up the necessary studies to enable you to fix up a proper post-war rate structure.

A. Just as soon as we are confronted with the problem [fol. 901] and know what the problem is going to be.

Q. You are confronted——

A. Mr. Chairman, we have all of these plants. Some of them may never operate and as to others, we do not know what production there will be. It may be one commodity and it may be a different commodity. We do not know what they may try to produce at a given point.

Q. What they try to produce may depend upon the rates that they can count upon, is that not the case?

A. Yes, sir. When they get around to figuring on whether they want to produce anything or not, they will come to us and they will soon find out what they can count upon.

Q. Yes.

A. If we were to set up something now, we would be acting entirely in the dark, and the chances are 99 out of 100 that when an industry got ready to do business or wanted to take over one of these plants and go into some commercial business, they would come around to us and they would say, "Here is the situation: These rates will not do." and they will tell us why.

Q. It is a hundred to one shot then that your judgment would be wrong, is that right?

A. Yes, sir.

Chairman Aitchison: All right.

Mr. McConnaughy: I would like to ask you one ques-[fol. 902] tion.

By Mr. McConnaughy:

Q. Your counsel stated that you could not anticipate what the conditions were going to be in 1944. Could you in 1930 anticipate what the conditions were going to be in 1933 with reference to economic conditions and the flow of traffic and the volume of traffic? Would you have been able to at that time?

A. No. We certainly knew the trend at that time, but did not think it was going to go down as far as it did in 1932.

Q. Haven't we been in such an economic change in this country since 1930 that there has been no time in the last ten years or twelve years that you could have anticipated three or four years in advance what the economic conditions and the volume of traffic and flow of traffic would be?

A. That is correct, and always will be correct.

Q. Yes.

A. You cannot forecast three or four years ahead and do it intelligently.

Q. Then is that the sole, fundamental reason that you think nothing should be done at this time?

A. (No answer.)

Q. Apparently that is your statement in answer to your counsel's question. Is that the sole, fundamental reason that you think nothing should be done with reference to [fol. 903] this entire situation today?

A. I did not say that nothing should be done. I do not know. I do know that it is no time to upset the entire rate structure for the purpose of trying to fix a post-war rate adjustment. If there is anything that is vital right now, and is wrong, I think it should be corrected right now, but I have not heard of any such.

Mr. McConnaughy: That is all.

Mr. Norman: I would like to ask one question.

Chairman Aitchison: Is Mr. Hughes finished?

Mr. Hughes: No, sir. I thought I had become The Forgotten Man.

Mr. Norman: Mr. Chairman, while I am up, I want to say, I take it there is no response to Mr. McCollester's statement necessary, but I do not want my silence to be taken as in any way agreeing to the position he took.

Mr. Hughes: I think, Mr. Chairman, I will conclude my questioning of the witness and submit him for cross examination.

Chairman Aitchison: Mr. Norman.

Mr. Norman: I just want to ask him one thing about this post-war situation.

Cross-examination.

By Mr. Norman:

Q. Is it not true that if one of these plants is located in Official Territory, it has an adjustment on manufactured [fol. 904] articles under which plants operate and have operated in the past, and no special consideration would have to be given before they could determine whether they could continue in business; whereas, if one of these plants is in the South or West, there has to be some special treatment of it? You recognize that in your statement, do you not?

A. No.

Q. Well, I understand that is what you said, that is, if you found out what they were going to manufacture or wanted to manufacture, you would go in and take up the question of giving them an adjustment if possible under which they could exist?

A. Yes. I am referring to the case of a new industry opening up in the manufacture of a product in a territory where that has not been produced before.

Q. He will have to get special treatment if he is going to do that under the existing rate structure obtaining in the South, and West, and interterritorially?

A. I think he would have to get special treatment in any event.

Q. You think he would have to.

A. I do not think that even if you set up a bunch of rates now—I have never seen anything set up in advance that would satisfy a new industry.

[fol. 905] Q. They have a bunch of rates set up in Official Territory, have they not, that these Official Territory representatives here say are satisfactory to them, whereas quite the contrary is true as to the South and West, is it not?

A. Well, I think you had better talk about Official Territory to some of the representatives of the Official Lines.

Mr. Norman: All right.

Chairman Aitchison: Are there any other questions of this witness? (No response.) You may stand aside.

(Witness excused.)

Mr. Hughes: There will be one more witness of this group, Mr. Chairman.

Chairman Aitchison: Mr. Smith.

Mr. Dana T. Smith: Mr. Robinson be sworn.

Chairman Aitchison: Raise your right hand.

FRANK W. ROBINSON was sworn and testified as follows:

Direct exmaination.

By Mr. Dana T. Smith:

Q. Will you state your full name and residence for the record, please, Mr. Robinson.

A. Frank W. Robinson, Omaha, Nebraska.

Q. What is your connection with the Union Pacific Railroad?

A. Vice president in charge of traffic of the Union Pacific System Lines.

Q. Are you also a director of the company?

[fol. 906] A. Yes, I am.

Q. How long have you been vice president in charge of traffic?

A. I have been—

Chairman Aitchison: I will vouch for Mr. Robinson's traffic qualifications. I have known him for 35 years.

Mr. Dana T. Smith: May he answer that one question as to how long he has been vice president?

Chairman Aitchison: Yes.

The Witness: Since 1927.

By Mr. Dana T. Smith:

Q. Are you familiar with the nature of these proceedings?

A. Yes, I am, in a general way.

Q. You understand that the Commission is also conducting an investigation with respect to the classification?

A. Yes.

Q. As well as class rates?

A. Yes. I understand that also.

Q. Have you any opinion as to the desirability of a uniform classification for application to all the different carriers, rail, water, motor carrier and in all the territory?

A. Yes. I rather think there are some very desirable features if that could be accomplished. The carriers have often discussed the question. They have progressed so far as they have been able to do, and I may say, aggressively [fol. 907] progressed, with a view to accomplishing in so far as they can, a uniform classification; and there have been rather substantial steps forward taken in that direction, but we have found it impossible to adopt uniformity in its entirety because of the effects, revenue effects, that it will have in different areas and territories of the country.

Q. Are you familiar with the class rate adjustment in the territory east of the Rocky Mountains?

A. Yes. Quite generally.

Q. Will you state whether or not the present class rate adjustment is generally satisfactory to the lines operating in the western district?

A. Well, that cannot be answered too briefly. The present class rate structure in effect in the territory, within the territory and interterritorially between the West and the East or South, is one of long history, the result of many years of investigation and what has been prescribed by the Commission. I am referring specifically now to 17,000 Part 2, the 17,000 Part 2 class rate adjustment, which was the last major adjustment, except between the West and the Southeast. That structure as prescribed by the Commission was substantially different, lower than the carriers thought should have been established. It created quite an upheaval in practices and conditions. It required readjustments of industry in many instances and relocation of industry. [fol. 908] That was in 1935, and since then these readjustments have taken place. Industry and the carriers—particularly industry—have adjusted themselves to it and on the whole I would say that the present class rate adjustment could be regarded, if not entirely satisfactory, one that is acceptable and to that extent is satisfactory, and should not further be disturbed by another upheaval or another general revision with the resulting consequences that were entailed when that adjustment became effective.

Q. Are you somewhat familiar with the study introduced by Mr. Jensen in his proposed Exhibit No. 7, or in his Exhibit No. 7, rather?

A. Yes. I have studied it at quite some length, and in some detail. One thing about it is disturbing. While the announced intention of the scale as proposed is to preserve the carriers' revenues, it falls far short of accomplishing that purpose, so far as the class rate adjustment itself is concerned. It is said that there will be accompanying revisions of the classification in order to accomplish this preservation of revenue. A few tests that we have made would indicate that the classification revision would have to be quite substantial, as high as 50 per cent on first class commodities within a given area, to accomplish this preservation of revenues which admittedly was the purpose of the Jensen study.

[fol. 909] Q. Would that be practicable and workable in your opinion?

A. No. I think it would be impracticable. I see no practical way in which a major readjustment of that kind will accomplish the desired result, or the announced result.

Q. You have heard Mr. Capron refer to the change in traffic conditions.

A. Yes.

Q. I assume you are familiar with and have found the same changes to which he referred?

A. That condition is quite prevalent, not only in Western Territory, but in the territory throughout the country. Specifically, with regard to the West, there have been major changes, the entire trend of traffic being changed. For a great many years prior to 1941 the preponderance of east-bound traffic on the Union Pacific was two to one car westbound. Because of the trend and changes in classification and kinds of traffic, that situation has become about equalized, about 50 per cent in each direction. That is not a normal condition, if there is such a thing as a normal condition. Normally and usually the preponderance of east-bound traffic is created because of the very large production of farm products, perishable products, lumber and those articles which are peculiarly produced in the intermountain and Pacific Coast areas. So there is a definite change in the trend of traffic at the [fol. 910] moment which is an abnormal situation.

Q. Do present conditions in your opinion provide a guide as to future readjustments in the class rate structure in the territory under consideration?

A. No. On the contrary, I think any landmarks or measures we have had to guide us have been obliterated. There is not any permanency, to my notion, to the distorted condition with which we are confronted. At the moment the tendency, and very actively and progressively so, is that manufacturers of consumer goods, as we understand them, are being rapidly converted to the manufacture of war necessities. In fact, a recent check indicated that about 80 per cent of our traffic now consisted of war materials and supplies as contrasted to the ordinary movement of commercial products.

Chairman Aitchison: May I interrupt?

Mr. Dana T. Smith: Yes.

By Chairman Aitchison:

Q. You had a responsible position in the Railroad Administration during the first World War?

A. Yes. I happened to be chairman of the Pacific Northwest Advisory Committee, traffic advisory committee at that time.

Q. How do conditions with respect to the matters you have just been discussing, compare at the present time with the conditions which prevailed at that time?

A. They were different only by degree. During the last war period, the movement of war supplies and materials [fol. 911] was largely toward the Atlantic Coast. That called for a decidedly unbalanced movement of traffic. During this emergency, the situation is divided both between the Pacific and the Atlantic, with a very heavy movement of westbound commodities. During the last war there was a great demand for wheat and farm products and food and supplies produced in the west—and lumber. Of course, those moved in larger than usual volume to eastern destinations, so there was not anywhere near the balanced tonnage nor the trend of traffic that is occur-ing during these times.

Q. I have forgotten. Did you have anything to do with putting in General Order No. 28, Mr. Robinson?

A. No. I had nothing to do with it.

Q. While I am on the subject,——

A. While I was in Washington, I had nothing to do with its preparation at all.

Q. Did you have anything to do with the efforts which the Director General made toward getting uniformity first, in classification; and second, in the class scales?

A. No, sir, I did not.

Q. There were some efforts made with respect to class scales which never came to a head. I thought possibly we could get from you the history of those studies.

A. No.

Q. Nobody seems to know about them.

[fol. 912] A. I did not participate in the discussion at that time, Mr. Chairman. I had some general knowledge of what was going on and some things were put out by the Director General of the railroads at that time which did make for uniformity in certain directions, and on the whole, they were quite helpful; but as to the discussion, I am sorry I could not acquaint you with the details as to just what was done in that respect.

Chairman Aitchison: Proceed.

By Mr. Dana T. Smith:

Q. I believe you stated, Mr. Robinson, that at the present time approximately 80 per cent of the traffic is war materials or Government traffic.

A. Yes.

Q. Has there been a substantial increase in the volume of traffic as a whole?

A. Oh, yes. Very greatly.

Q. I take it that is due to the war effort and war conditions.

A. Entirely so.

Q. Has there also been a substantial increase in the revenues of the carriers as the result of the increased volume of traffic?

A. The increased volume of traffic is reflected into the gross revenue of the carriers, and the increase in the gross revenues is substantially greater than was anticipated as a result of the increases allowed under Ex Parte 148.

[fol. 913] Q. Has there been a substantial part of the gross revenue that has been carried into net during the last year, that is, during 1941 and 1942?

A. Unfortunately that is true. I say "unfortunately", because there was a long period of drought, or a dry spell, as far as the revenues of the carriers were concerned, and it became necessary to get along with what we had. I am rather paraphrasing Mr. Coolidge who said in a speech he made at Los Angeles which I happened to attend, "Southern California has made the most of the best that they have. That described the condition of the carriers in this period from 1930 to 1939. There was much deferred maintenance, many things we should have done but could not do because of lack of funds. With the increasing of revenue and availability of revenue with which to do, we engaged so far as we could in rehabilitating the properties.

Now then, we are confronted with priority requirements and a shortage of labor which prevents us from going ahead with the construction, especially the construction and rehabilitation of the property that had to be carried on. That in turn makes an inflationary net revenue result which is not a true condition and one that is not healthy; but because of the heavy earnings and tremendous movement of traffic and the inability to get materials and supplies and labor, that results automatically.

[fol. 914] Q. In your opinion, can the railroads afford reductions in their rates because of their present earnings?

A. I think that goes a little further than the question of whether we can afford it or not. The question is more as to the reasonableness of the rates. We made an application for an increase in the rates at the time when we were confronted with substantial increases in expenses. The Commission after investigation and thoroughly so, granted, somewhat less than the carriers sought. The increase in the revenue is not due to the rate levels so much as it is to the volume of the traffic that is moving. I want to inject there a fact well known, of course, to the Commission, namely, that the increase there permitted was only for the duration and six months thereafter, so that this adjustment is a temporary one for that period. I think there is nothing in the situation that makes for apparently inflated net earnings that would justify the opinion that the rate level is unreasonable, or that it ought to be cut down just because of a temporary condition and a temporary increase in net revenues.

Q. Mr. Robinson, do you know of any serious complaints made by the shippers as to the present adjustment of class rates in the Western District?

A. Well, I have been in close touch with our public. When I say "our public," I mean the shippers who patronize our [fol. 915] railroads. Not only we on the Union Pacific, but also other responsible officers, whether they are traffic or operating officers, endeavor to get around among these communities and keep in touch with our people to sense the atmosphere and the way things are going, to keep contacts with them because we are part and parcel of the communities which we serve. There have been no complaints of a broad general nature that have come to my attention in the territory served by the Union Pacific or generally in the territory in which we operate, that the class rate adjustment is not entirely satisfactory. There have been no complaints about it. I am talking now of broad general complaints.

Q. Yes.

A. There may be specific inquiries, specific complaints, and requests upon us for readjustment of rates here and there, but that is not as I understand it, the purport of your question.

Q. That is right.

A. That is just the garden variety mine-run problems with which we are confronted daily and monthly in the operation of these railroads.

Q. Do you see any real need at this time for any marked readjustment in the class rate structure?

A. Well, there is not only no need for it, as far as I can [fod. 916] see, but I think to undertake a general class rate readjustment of the general structure can find no foundation in fact and no landmarks from which to move and upon which to predicate a readjustment that may fit some post-war conditions that are so highly problematical at the time as to be of no value whatever in trying to gauge the future with the present situation.

By Chairman Aitchison:

Q. Why look at it so pessimistically as that? Suppose we were to make an adjustment during the war very much as the Director General made his Order No. 28, and then war conditions ceased. You recall, do you not, in 1920 how quickly the proper adjustments were made, and we may say that those adjustments were the largest in amount that have ever been made by anybody. Why assume that you could not make the necessary readjustments after this war?

A. General Order No. 28, Mr. Chairman, was a great revenue program. It created an initial 25 per cent increase in the rate structures to meet a 25 per cent increase accorded to labor.

Q. It did much more than that. It took the minimum rates—for example, in your own territory it raised the rate to The Dalles from Portland.

A. Yes, but there was a general upward trend.

Q. I mean, it ironed out inequalities with respect to low [fol. 917] minimums and low initial rates.

A. It dealt with certain minimums, yes, but generally it advanced rates percentage wide throughout the country. The situation between Portland and The Dalles locally might have been one thing, but the general level was very drastically raised. Then it was later raised again by a great advance. Then in the post-war adjustment the Commission prescribed, voluntarily a 10 per cent reduction.

Q. What was the very great increase to which you just referred that was made by the Commission?

A. That was in Ex Parte 74.

Q. Yes.

A. Immediately after the duration of the war.

Q. Yes.

A. That was a further advance.

Q. Yes.

A. Then shortly after that, there was a further reduction.

Q. Not a further reduction.

A. There was a reduction.

Q. There was a reduction of one-half of the advance which had been made.

A. That was a situation that primarily dealt first with the needs of the critical period through which we were then passing, and at last those rates went down to an even lower level than before. As I view this situation, we are now, [fol. 918] except for the Ex Parte 148 increase, at about the same level we have been for a long period of time. There is not any complaint, particularly, about it. The country as a whole is highly prosperous. A tremendous amount of money is finding its way into circulation. There are no complaints. There is no call for a reduction of the revenues of the carriers, or a readjustment of rates.

Q. I am not speaking of that. I am talking to the point that has been made here that we cannot foresee what is going to be the condition in 1944, and thereafter. I was just asking, why be so pessimistic about it when you can look back and recall having had four different levels in four years, from 1918 to 1922, all fixed by competent authority.

A. Those were not anticipated rate adjustments. They were made before or after the fact. The 1918 adjustment was made in the face of a condition that definitely existed. Your Ex Parte increases were made in the face of a condition that then prevailed. Your reductions made by the Commission following that were made under conditions that were then present, and not anticipated. This discussion here this morning relates to how we will judge the conditions three, four, five or six years hence as a measure now for adjusting rate levels in the light of the conditions today prevailing. I am not pessimistic, but I say there is [fol. 919] no landmark, there is no way in which to guide the Commission or ourselves in endeavoring to try to find out a basis which will fit a post-war condition in the

light of the revenues now being produced and the traffic that is now moving.

Q. Well, if there were landmarks, I am asking you if the experience of those four years does not indicate that you and we can work pretty fast?

A. We can when conditions require it, if such a condition does prevail and presents itself. It does not prevail now. It does not present itself now.

Q. My recollection is that the Ex Parte 74 increase became effective virtually simultaneously with the increase in wages? Is that right?

A. There or thereabouts.

Q. Yes.

A. I cannot say as to the time of its happening. I feel that the Commission then pursued a very wise and intelligent course. Generally I support that theory yet. I think the Commission will deal with this situation just as intelligently and with just as much care as they have with any of the preceding cases that have been before them. I mean by that, in the light of the conditions that prevail that may call for a general readjustment either upward or downward.

[fol. 920] Q. While I know the rates are not involved here, I would like to get this into the record if I can: Through the Mountain Pacific area the basis of rates that you have—class rates I am speaking of—were originally made about 1912, were they not, plussed, of course, and reduced by the general increases and reductions.

A. I am sorry. I cannot answer that chronologically, because I do not have it in my mind. It has been a long time.

Q. I have in mind the Portland rate case, as you will probably recall.

A. Yes.

Q. About 1912.

A. (No answer.)

Q. You will take my word for it?

A. I will, any time.

Q. That basis of class rates and class relations has remained in effect in that particular area and has been extended generally over the Mountain Pacific area so that it has an age now of something like 28 years.

A. Yes.

Mr. Dana T. Smith: May not the record at the same time show that in Docket 14999, the Commission prescribed them for application from California to Arizona and then later on——

Chairman Aitchison: I was trying to develop that it [fol. 921] had been extended over the territory.

Mr. Dana T. Smith: It was extended by being prescribed by the Commission in that case and in a subsequent case from Salt Lake City, but there is a dual set of class rates which prevails in Mountain Pacific Territory and has during all of these years which is much lower than the 14999 scale. As between the Pacific Coast and Utah Common points, at least from California, the class rates are on a much lower level and I believe classification ratings are different than they are under the 14999 scale.

Chairman Aitchison: Do you have a different classification, virtually, in effect on your Transcontinental class rates than you do on your local class rates?

The Witness: No, sir.

Mr. Dana T. Smith: Not classification.

By Chairman Aitchison:

Q. At one time you had virtually a classification on Transcontinental class rates; do you recall that?

A. Well, if there was, that is so many many years ago I do not recall it clearly. The Transcontinental tariffs are subject to the Official classification.

Q. In both directions?

A. Yes, sir.

Q. The destination theory does not work with respect to the Transcontinental class rates?

[fol. 922] A. Oh, yes. That rule of the Commission applies with respect to whatever classification governs and whatever destination territory the commodity may find rest in.

A. Yes, sir.

Q. I do not quite reconcile that with your statement that the Transcontinental rates are governed by the Official Classification.

A. The transcontinental tariffs are subject to the classification in effect, the Official Classification.

Mr. Fyfe: The Western Classification.

Mr. Dana T. Smith: What was that?

Mr. Fyfe: The Western Classification, both directions.

Mr. Dana T. Smith: Mr. Fyfe says the Western Classification, both ways.

Chairman Aitchison: I see. The destination theory does not apply eastbound?

Mr. Fyfe: That is correct.

The Witness: The tariff will speak for itself. I am not so sure of that. I was under the impression, Mr. Chairman, that the Classification rules as to the destination application would prevail. Mr. Fyfe, if he is correct in that,—he ought to know.

Mr. Fyfe: You had in mind the Western Trunk Line situation where the official applies eastbound.

[fol. 923] The Witness: Frankly, I cannot answer the question, Mr. Chairman.

Mr. Dnan T. Smith: Have you concluded, Mr. Chairman?

Chairman Aitchison: Yes.

By Mr. Dana T. Smith:

Q. Mr. Robinson, the Chairman has referred to these four general rate adjustments which took place during the war and after the war, the first World War. As I understand those increases, general increases and reductions, did they materially change the relation of rates in effect throughout the country?

A. No, not as such, except where a percentage increase or a percentage reduction affected the volume of the rates. For illustration, with respect to the Pacific Coast rates which are the highest rates in the country, the percentage increase created a larger increase in cents per hundred pounds than there was on the same commodity moving from a point in closer proximity to its destination.

Q. Well, they did not have——

A. But as to relationships, no.

Q. They did not have the effect of bringing the level of rates in the various rate territories, such as Official Territory and Western Trunk Line and the Southwest, closer together or more nearly to a common level than they had been prior to that time?

A. They did not. That was not the purpose.

[fol. 924] Mr. Dana T. Smith: You may cross-examine.

By Chairman Aitchison:

Q. You do have, as a result of the various actions taken, virtually a uniform class scale applicable in the western two-fifths of the United States, do you not, with the exception of such matters as Mr. Smith may have mentioned?

A. Basically I think that that might be answered affirmatively. The scale, however, is not observed between Utah and the Coast, the South Pacific Coast. It generally is between Utah and the North Pacific Coast.

Q. Reductions were made to meet motor truck competition, as I understand it.

A. That is correct.

Q. Yes.

A. That is correct. I want to add a little bit, if I may, as to the conditions for the future.

Chairman Aitchison: Proceed.

The Witness: I am concerned about that, and it certainly is a matter of consequence to the Commission in your consideration of a rate structure, class rate structure, at least, that might be more or less uniform, which I think is disastrous because we are going to have such changing conditions. I can visualize, if I permit myself to let my mind run on this thing, conditions that we have not known before at all. All of the intercoastal vessels today are out [fol. 925] of service except a very occasional shipment about which I am not supposed to even think of, that fights its way through. But that is not a commercial operation. That is a special condition that requires its movement in that direction.

There is a very large construction of tonnage, not as fast as it ought to be in the face of the sinkings, but it is going to accelerate. It is going to be a very enormous tonnage that we will have under American registry, of vessels available for service, post-war. That tonnage, that shipping, will find its way into intercoastal and coastwise operation. Probably what we have known before in the way of competitive conditions, waterwise, is going to be pretty tame compared to what will be available in the future because of the large number of vessels seeking employment. Unless thoroughly regulated, there will be severe competition between themselves to secure traffic. There will be a very great increase, also, in the operation on the inland water-

ways, because there will be so many light vessels of light craft that will be able to operate on the inland lakes, inland rivers, as to make a competitive situation there such as we have never experienced before. There are going to be thousands of airplanes that will be obsolete for passenger service and thousands of pilots who will be seeking employ-
[fol. 926] ment, and the problem of air freight cargo being moved at rates substantially less than prevail today and lower than any of us have thought would be possible by air is going to prove a factor in our post-war condition that is going to make the railroad situation extremely difficult to meet. The highways will have been improved and are being improved. The diversion of tonnage from them now, to a lesser degree because of tire, gasoline and fuel requirements, is going to prevent them from breaking down, and where military necessities require, they are going to establish very fine highways. So between the air, the water and the highways, we are going to have a problem. It is going to call for the greatest constructive thinking for self-preservation if you please, on the part of the railroad officers and also the Commission to cope with and meet that situation. In the face of all that and because of all that my judgment is that this is clearly no time upon which to even consider what kind of a rate structure post-war conditions will require, particularly with respect to class rates.

I am afraid that the condition that will prevail postwar will require an entirely different type of thinking than anything which your honorable body can now bring to bear on this situation in the light of what goes on now, and it would be futile if not absolutely dangerous, to the revenues of the rail carriers, to undertake now to prescribe a struc-
[fol. 927] ture that in your judgment might prevail some years hence.

Chairman Aitchison: You may cross-examine.

Mr. Norman: I would just like to ask Mr. Robinson one or two questions.

Cross-examination.

By Mr. Norman:

Q. Assuming that you are correct in your belief, which is evidently very earnestly held, that you cannot at this time prescribe the level of rates that should obtain in the post-

war period, would you not say that nevertheless, in view of the fact that these war built plants in the different sections of the country will have to determine the question of their existence at the time the war ends, that it would — desirable to establish a framework of a rate structure that would as nearly as may be afford equal opportunity for the continued existence of those plants in the various sections of the country?

A. No, I do not think so, Mr. Norman.

Q. You do not?

A. No.

Mr. Norman: That is all.

The Witness: I did not answer that way just to be evasive.

Mr. Norman: I understand.

The Witness: I did not mean to do that at all.

[fol. 928] Mr. Norman: I understand.

The Witness: My judgment is that there is no condition which prevails at the moment upon which I can say to a plant—I will take one concrete example, for instance. The Chairman referred to one at Hastings, Nebraska. I do not think that is a good example.

Chairman Aitchison: You have one down in the territory south of Salt Lake somewhere, do you not?

The Witness: We have one in that territory producing basic magnesium, which is a sizable operation. The tenants or operators of that plant rather think that in post-war conditions they can produce magnesium and ship it around. Maybe they can. I hope so. We are pretty short of industries of a large nature in our country and we would like to see them come in and settle.

Mr. Norman: Do you think—pardon me.

The Witness: Of course, that would never have been settled out there at this time if it had not been for Government money and war necessities that made it necessary to produce a vital commodity.

Mr. Norman: Do they have——

Chairman Aitchison: Do not interrupt the witness, Mr. Norman.

Mr. Norman: Pardon me.

Chairman Aitchison: He was not through.

[fol. 929] The Witness: What are they going to do after the war? I do not know. I have talked with them very

frankly and very candidly, the operators of that plant, about what they can do. I say "Well, I am not going to try to project myself into the future at the present time. You are producing a commodity at Government expense." All of these major plants are. I do not say that critically. It was a creation of necessity and need in a vital situation. There is a lot of that around the country. I do not know what we can do. We may have to do a lot of things and go a lot farther in the adjustment of those rates than I conceive now to be and hope will be necessary. I would like to hold it up. I would like to make some money on it.

By Mr. Norman:

Q. Do those people think that they can manufacture and distribute magnesium in the post-war period on the existing rates that you have out there?

A. Well, I have not talked to them about that. They are probably more concerned at the moment about how much it is going to cost them to produce, and that is a vital thing today.

Q. After they find that they can do that on a competitive basis, then they have got to find out whether they can deliver on a competitive basis?

A. That is right.

Mr. Norman: That is all.

[fol. 930] The Witness: By applying a constructive mind to this situation, I would like to find some way, if possible, for them to continue in operation. If I cannot, it is just too bad.

Mr. Norman: That is all.

Chairman Aitchison: Is there any further cross examination?

Mr. A. L. Reed: I have a few questions, Mr. Chairman.

Chairman Aitchison: Mr. A. L. Reed.

By Mr. A. L. Reed:

Q. You referred to your experience in connection with the efforts of the carriers to establish a uniform classification and I believe stated that you had in some measure produced a uniformity. Did that refer to uniformity nationwide?

A. Yes.

Q. Would you care to tell us what was the major difficulty that you encountered that prevented you from accomplishing complete uniformity,

A. Yes.

Q. What was it?

A. It was the view of the territorial regions, the South, the West, the East and the Northwest, upon the revenue effect that would follow because of changes. One way to make uniformity is by adopting the lowest application that prevails. To do that in some sections, in which conditions [fol. 931] seem to justify and have created the lowest rate and to apply that nationally in territories where conditions are totally different would be to pull down the classification and revenue to the basis of the lowest. You can always adopt uniformity if you will go to the lowest thing you can find. We do not want to do that. We could not do it.

Q. Did that difficulty grow out of the classification ratings alone, or was it a continuation of the classification ratings and the rate scales in the various territories?

A. The revenue effect is determined first, by the classification to be applied, and then the rate applicable to the classification, but rates themselves are not the controlling factor. Other than that, if by adopting the lowest classification for the sake of uniformity in the far western territory, revenues by the application of the rates prevailing were seriously affected, then of course we do not have any enthusiasm for that uniformity.

Q. May I understand from your answer that you found the difficulty to be a combination of the classification ratings and the application of those ratings to the various rate scales in the three major classification territories.

A. I think that is a fair statement.

Mr. A. L. Reed: Thank you.

Chairman Aitchison: Mr. McCollester.

By Mr. McCollester:

Q. Mr. Robinson, you referred to the possibility of com- [fol. 932] petition with the coastwise and intercoastal carriers after the war due to the great volume of ship tonnage that is likely to be available. Now, following the last war was not the situation which confronted the Transcontinental railroads and some of the older intercoastal lines, the competitive situation, very acute because the

Government having ships in its possession disposed of them at bargain prices to operators who were then able to operate at a profit because they had no investment in ships?

A. I think that situation did prevail.

Q. Now, in endeavoring to locate industrial plants on your line of railroad, do you not find that a factor which is of great importance is the extent of the investment in that plant which an industry must have?

A. Yes.

Q. Do you know in the case of the war plants that have located on your line what investment they will represent to industries in private operation after the war?

A. I do not follow the question.

Q. You know, do you not, that it is—as I understand it, at least—a fairly general practice that these war plants are being amortized over a five year life only?

A. Yes.

Q. Therefore at the end of five years they will represent no investment whatsoever?

[fol. 933] A. (No answer.)

Q. Would you not anticipate that a concern could acquire, or would be offered one of these plants at practically no investment, and therefore could do business on a higher level of freight rates than another concern with which it competed which had its own plant investment?

A. I think that is axiomatic, if I might say so.

Q. You do not know now, you do not know now, nor can you foretell what investment will be called upon by those who may operate these present war plants?

A. I thought I tried to make that clear.

Q. Yes.

A. I do not know whether I did or not.

Q. Yes, but that will greatly affect their competitive ability and the rate levels they may need, is that not so?

A. It will be a decided factor, yes.

By Chairman Aitchison:

Q. Do you recall from your past days in my section of the country that in the far west they have quite a different setup of relations, classes to first class of the class scales, do you not?

A. Yes. That is right.

Q. It is quite marked?

A. You mean, the relation between first and the lower classes?

Q. Yes. It is quite marked with respect to fourth, fifth, [fol. 934] A, B, and C, and sometimes D and E.

A. That is right; quite different from some other districts.

Q. Are you familiar with the history of that particular set of class rate relationships?

A. As to why it was developed in that way?

Q. Yes.

A. No. I cannot say that I am.

Q. And what originally resulted in its being projected out into that area?

A. I cannot say that I am, Mr. Chairman.

Q. Have you given any consideration to the reasons which justify its maintenance?

A. (No answer.)

Q. I know it is not in issue here, but the question of what the relation between the classes should be is always in issue in a proceeding of this sort.

A. Well, whenever we have had occasion to get into any discussion on those subjects, it had been my personal view that the adjustment was all right. I have no complaint. Now, with regard to the relationship of classes, one to the other, I cannot answer your question as to just why that was evolved. I do not know.

Q. I think historically it was put in by the northern lines first, and then was adopted by the Washington carriers and spread from that.

[fol. 935] A. I know that in some instances we found it necessary, frequently so, in fact, to depart from the class rate adjustment because of competitive conditions that prevailed. We found that the class rate adjustment needed to be revised if we wer to share in the traffic under the competitive conditions with which we were confronted.

Q. Well, is it not a fact that in that particular area you have, with respect to class rates, a lesser spread between carload and less than carload than you have in your class rates within Western Trunk Line and on the eastern part of your line?

A. I think that is so, because of the higher percentage of the lower classes in that area than prevailed in other areas. For instance, we have a class A that is 65 per cent of first class there, and 55 in Western Trunk Line Territory. Then

the spread is lesser between that carload rate and first class or less than carload rate than it will be in the other territory.

Q. I think you have your figure incorrect. It is 50 in the West.

A. I am only trying to give you an illustration.

Q. Yes. You can take the difference between fourth and fifth class and bring that out more sharply.

A. Yes, That would follow.

Q Now, that has had quite an effect, has it not, on the [fol. 936] commercial development in that area? I am not saying it has had an unfavorable effect, but it has had quite an effect, has it not, with respect to the distribution of goods?

A. I do not know that it has had any effect.

Q. That is because you have voluntarily put in exceptions to the class rates?

A. Well, it may be. We do not have any industries in the West that have grown up because of the class rate adjustment generally within that area. The jobbing houses that used to be in existence at Portland and at Seattle, the large ones, have gone out of business. Some of them have developed and gone into the interior, to Walla Walla and Pendleton, where they have branch houses of distributing points. There are no more wholesale houses around anywhere. I think that is due to the competitive conditions, and the ability to move by motor truck. Every merchant at every junction point, or every fair sized city carries a stock and reaches out and supplies his trade within 30 or 40 or 50 miles of his store.

Q. Are there not a good many commodities handled that move less than carload fourth class and carload fifth class?

A. I think that is true.

Q. In the area that we have been discussing the difference between the two is as 60 is to 50, or one-sixth of the [fol. 937] less than the carload rate?

A. Yes.

Q. Now, in Western Trunk Line Territory you have a much wider spread, have you not?

A. I think so. I do not have those percentages in my mind at all.

Q. Well, assume that is a fact. You would expect to find the wholesale distributing business in the smaller communities would not be on as substantial a basis as where

they have a wider spread between fourth and fifth class, is that right?

A. That is right. That is the margin by which they do business.

Q. Did that have any effect, do you think, on this historical event of the small jobbing houses going out into the interior?

A. Yes. I think that was one of the factors. We find the same condition prevails at Omaha. The history of the jobbing business in Omaha, Kansas City and St. Joseph, Missouri, is identical with that which has developed and evolved at Portland. They have no more wholesale houses in any of these places as you and I used to know them, as wholesale houses.

Chairman Aitchison: Are there any other questions?

Mr. Norman: I would like to ask one more question [fol. 938] in connection with the questions asked him by Mr. McCollester.

Chairman Aitchison: Mr. Norman.

By Mr. Norman:

Q. Is it not true, Mr. Robinson, that the majority of the plants such as you described in answer to Mr. McCollester's question, these plants that are built by the Government and amortized in five years, are located in Official Territory?

A. Will you let me see if I understand your question? Have the reporter read the question.

Mr. Norman: Let me put it this way:

By Mr. Norman:

Q. Is it not true that the Government building of plants for war purposes has resulted in a very much larger proportion of them being built in Official Territory than in Southern and Western Territory?

Mr. Dana T. Smith: Are you putting that on a per capita basis?

Mr. Norman: I am putting it on a point basis.

Mr. Dana T. Smith: If you have $41,000,000 spent by the Government in Utah, on a per capita basis that is more than it is in the state of New York or elsewhere.

Mr. Norman: I am asking the witness if he knows—well, that is true.

The Witness: I think as far as numbers of plants are concerned, disregarding the question of dollars, there are [fol. 939] more plants engaged in war industries in Official Territory that is Chicago and East, than there are in the West or South.

Mr. Norman: So that the—pardon me.

The Witness: That is just natural, because there have been so many plants converted from commercial industry to Government projects.

By Mr. Norman:

Q. So that when the time comes for the Government to give away plants, it will have more to give away in Official Territory than it will in Southern and Western?

A. In numbers, yes. I think so.

Mr. Norman: That is all.

Chairman Aitchison: Are there any other questions of Mr. Robinson? (No response.) If not, you may stand aside.

(Witness excused.)

Mr. Eshelman: Mr. Chairman, the Western Lines have kindly consented that I might put on Mr. Heywood at this time, if it is agreeable to the Commission. He was not here yesterday when we put on our other witnesses.

Chairman Aitchison: We would rather take the time ourselves, Mr. Eshelman, to make an announcement.

Mr. Eshelman: Very well.

Chairman Aitchison: It is imperative that the members of Division 2 of the Commission should return to Washing- [fol. 940] ton during the next week. We expect to be able to remain here until at least Thursday, and probably a good part of Thursday. Then we will be obliged to return to Washington. It is our expectation to take the testimony, if it can be arranged with counsel of shipper witnesses, persons who may have come here for the purpose of testifying, or who may come, such as those arranged for Monday. It may be necessary to ask some of these gentlemen, if they are willing, to let their testimony be taken before one of the Examiners simultaneously with the main hearing going on here. That will, of course, require the cooperation of counsel. If there are any such per ons who would like to be heard in such a way, will they kin ly

communicate with Mr. Carter and Mr. Koebel and Mr. Haden. Let us have the names and tell us about the length of time their testimony will require and what the general subject is.

While we are obliged, or will be obliged to adjourn the hearing on Thursday next, it is our intention to resume it before the Division as early as we practicably can. A preliminary study of our calendar indicates we can expect to do that probably commencing November 16th. We are not definitely [redacted] set as to the place, although I think possibly during the day we may be able to learn it. I believe it will be in this general region. We want to go [fol. 941] on with our program just as we have it outlined with the exception of these shippers and others who may have come here and have short statements, or for whom it would be a hardship to come back at a later time. We will go on with the program exactly as indicated, stop and then resume it later. However, we shall expect that any examination of underlying papers and study of exhibits that have been submitted will be made in this interim period so that cross-examination can be completed and witnesses excused and the record closed upon such part of the case. That will mean, therefore, that at this hearing which I have indicated will be held probably in the latter half of November—I think you can count on that pretty well; we will know later in the day—we will expect you to go on to the stage of rebuttal and be able to close the record. Please understand that the individual witnesses must come to the Examiners and identify themselves and give the information, and then we will, before we close the hearing today, interrogate counsel as to whether that can be arranged. Again I want to emphasize what is the spirit and gist of the new rules and was also distinctly agreed on at the prehearing conference in Chicago in this very proceeding with respect to making available all exhibits at the earliest possible moment to all concerned. Mr. Norman.

[fol. 942] Mr. Norman: I just wanted to suggest that the adjourned hearing be held in Louisville, Kentucky, where we have two practically new hotels.

Mr. Bee: I would like to suggest St. Louis.

Chairman Aitchison: Off the record.

(Discussion outside the record.)

Chairman Aitchison: We will suspend until 2 o'clock P. M.

(At 12:30 o'clock P. M., hearing adjourned until 2 o'clock P. M.)

[fol. 943] Afternoon Session

The hearing was resumed pursuant to recess.

2 o'clock P. M.

Chairman Aitchison: Come to order, gentlemen.

Mr. Norman: If the Chairman please, may I ask if it is to be understood that the adjourned hearing to be held on November 16th is to conclude the hearings in this proceeding?

Chairman Aitchison: Well, we are going to do our best, of course, to get through. Let me again emphasize the necessity for making any necessary examination of underlying data, and so forth, and preparing yourselves for a final and conclusive cross-examination of the witnesses who have been on the stand, and whose cross-examination has been deferred, or not concluded, with respect to any matters concerning which they have testified; and furthermore, the arrangements which were made at the prehearing conference for making exhibits open to the public as soon as possible, ought to be carried out. I want to say one other thing also in this connection, and that is that you will have plenty of time, now, to get your exhibits up in a way that will comply with the Rules of Practice, so that it will not be necessary to waste 30 minutes or more time identifying a long series of exhibits, presented by a single witness, when it ought to be done in 30 seconds.

Mr. Norman: In other words, then, if the Chairman [fol. 944] please, the parties cannot expect to come back for a further hearing, after the adjourned hearing beginning on the 16th has been concluded; is that correct?

Chairman Aitchison: I did not say anything about that. We are going to do justice in the matter, but we want to bring it to a conclusion. I indicated this morning that we will expect the presentation to be completed in the order in which it appears in the notice, including the rebuttal,

which normally closes the case. We are going to try to handle the thing in a proper way.

Mr. Bee: If the Chairman please, I thought the statement that you made this morning was absolutely clear, but we had some argument about it during the lunch hour. As I understand it, we are going to run right through until some time on Thursday of next week, and wherever we stop at that time, that is exactly where we are going to commence, at that same point when we resume the hearing on the 16th.

Chairman Aitchison: That is right.

Mr. Bee: And the exhibits that are here now should be distributed, as I understood your Honor, regardless of the fact that they may not comply with the requirements of the Commission Rules of Practice; but all of the exhibits that are to be compiled between now, and the time of the next hearing, should be brought into conformance with the rules.

[fol. 945] Chairman Aitchison: Yes, that is true, but if anybody here has exhibits that do not comply with the rules, there is plenty of time to get them put into such shape as the rules require.

Mr. Bee: As I understood your Honor, we are to distribute the exhibits that we have here now, and let the parties have them.

Chairman Aitchison: Yes, but I think you still have plenty of time to get them in proper shape, and still do that, so that we will not have to take half an hour's time, with all of the confusion that we have had, in identifying a long series of exhibits that should have been disposed of in ten seconds.

Mr. A. L. Reed: Did your Honor state the place?

Chairman Aitchison: I have not stated it as yet, no, but I can say at this time I think it will be in the Hotel Deshler, at Columbus, Ohio. You may continue.

Mr. Eshelman: If the Commission please, on behalf of the Eastern carriers, at this time I will call Mr. Heywood.

J. L. Heywood was sworn and testified as follows:

Direct examination.

By Mr. Eshelman:

Q. Mr. Heywood, please give your full name to the reporter.

A. J. L. Heywood.

[fol. 946] Q. Your present position?

A. Assistant Comptroller, Pennsylvania Railroad.

Q. How long have you held that position?

A. A little over three years.

Q. Would you state what your duties include, and what your previous experience has been?

A. During that period of a little over three years, I have been in direct supervision over the compilation of statistics and cost studies. For nine years prior thereto I was directly connected with the analysis and making of cost studies, particularly in connection with various rate matters. I have been employed in the Accounting Department for 27 years.

Q. In what capacity are you here today?

A. As Chairman of the Eastern Carriers Accounting Committee in Dockets 28300 and 28310.

Q. Will you state whether or not you are familiar with the results of the Committee's analysis of the cost-finding formula known as Rail Form A, submitted by Dr. Edwards as his Exhibit No. 4 at the original hearing in this case?

A. I am.

Q. And also with the cost scales based thereon, which are embodied in Dr. Edwards' Exhibit No. 3?

A. Yes.

Q. And likewise the explanation of such scales, as found [fol. 947] in Dr. Edwards' Exhibit No. 2?

A. Yes, sir.

Q. Have you prepared with the assistance of the Committee, a statement commenting on certain methods employed in Edwards' Exhibit-2, 3 and 4?

A. I have.

Q. Have you committed your testimony to written form?

A. Yes, sir.

Q. Your testimony on direct, that is?

A. Yes.

Q. Have copies of your written testimony been distributed to the parties on Tuesday of this week?

A. Yes.

Mr. Eshelman: Mr. Chairman, with the consent of the Commission, and the parties, I should like to ask that Mr. Heywood's statement be copied into the transcript, as in the case of the other Eastern witnesses.

Chairman Aitchison: Is there any objection to that course? (No response.) It may be done.

(The statement is as follows:)

The following statement which represents my own views in respect to the exhibits referred to, also has the concurrence of the other members of the Committee.

Comments on methods used in Exhibits 2, 3 and 4:—1—Introductory. At the outset of Dr. Edwards' Exhibit 2, [fol. 948] after stating that the purpose of the study is to provide territorial cost data that may be used in determining the relative transportation costs in the respective rate territories, and that may be of aid in the development of territorial class rate scales, the following statement appears:

"The scales of costs shown for each territory are based upon the average operating conditions in each territory. The costs, therefore, represent a weighted average of all conditions, i. e., main line and branch line operation, through train and way train operation, operation of lines of heavy traffic density and lines of light traffic density and the operation of large terminals and small terminals."

It is thus apparent that the studies are based upon system operating expenses by individual roads, and that the details are consolidated into territorial costs. As further stated at page 1 of Exhibit 2:

"The distribution of the expenses herein has been based on the relative use that the carload and less carload traffic of varying loads makes of the transportation facilities of the carrier."

On page 2 of Exhibit 2 is set forth a description of the different levels of cost developed by the study. The territorial cost scales are based on Cost Level II which embraces freight operating expenses, rents, and taxes. The

other levels of costs are predicated on Level II, and may [fol. 949] be summarized as follows: 1—Freight out-of-pocket costs; 3—Cost Level II plus returns of 4 and 5¾% on the property value allocable to such freight traffic; 4—Cost Level II plus l. c. l. and passenger operating deficits but excluding return; and 5—Cost Level IV plus returns of 4% and 5¾% on property value, including the l. c. l. and passenger portions.

Concerning these cost levels and their economic significance, Exhibit 2, at pages 2-3 states: "The respective levels of cost developed in this study indicate the average revenue which each 100 pounds of freight would have had to earn during the period studied (considering the length of haul, net weight of load, per cent of empty return of the equipment, and the tare weight of the equipment) to cover the elements of cost indicated. The nature of the commodity carried receives consideration in these scales only through the variation in load per car, and type of car used. Loss and damage receives separate consideration apart from the scales."

The primary basis used in the development of these costs is the method of separating total operating expenses as among freight, passenger, and other services of individual roads in accordance with the procedure prescribed by the Commission for the keeping of accounts. The adoption of this method does not appear to have been dictated purely [fol. 950] by considerations of accuracy in cost purely and the method does contain many arbitrary allocations of expenses.

In order that the views and criticisms which I shall offer respecting the formula may be better understood, a list of factors used for all roads on a nation-wide basis and a statement of the principal methods used in the formula will be briefly set forth as a basis for the specific comments which will be interpolated. In the case of each example the reference to a particular schedule will be to that indicated in the Formula which was introduced as Dr. Edwards' Exhibit 4. In conclusion some general comments will be offered.

II—Nationwide factors used in developing individual road costs. 1. Cars handled in various switching operations on individual roads are weighted by factors developed from certain switching studies submitted in western switch-

ing cases to obtain equated cars handled—(Schedule II—Sheet 3—Column 3) Carrier terminal switching and connection terminal switching, industry and team tracks, including allowance for intermediate switching—1.00. Carrier terminal switching and connection terminal switching, freight house tracks—.80. Interchange switching, including allowances for intermediate switching—.45. Intertrain and intratrain switching—.25.

Comment: These weighting factors are very important [fol. 951] as they produce the equated results used to separate the total yard and train switching expenses of the individual roads into the classes of switching in order to arrive at the switching expenses per car by classes of switching. There are listed nine switching cases in the western portion of the country from which data were obtained, but an examination of the working papers shows that the rail-barge case, Docket 26712, was freely used, also that the opinions of senior members of the cost section were relied upon to a great extent. It is inconceivable that there are no differences in switching operations throughout the various sections of the country compared with the conditions at the limited number of locations covered by the switching cases studied; in fact the following indicates that a decided difference does exist.

The factors are based on the average number of engine minutes required to switch a car in the following services as per Dr. Edwards' work papers:

(a) Carrier terminal switching and connection terminal switching—Industry and Team tracks: 13.5 minutes; weight, 1.00.

(b) Carrier terminal switching and connection terminal switching—freighthouse tracks (80% of 13.5 minutes): 10.8 minutes; weight .80.

(c) Interchange switching: 6.1 minute-; weight .45.

[fol. 952] (d) Intertrain and intratrain switching: 3.3 minutes; weight .25.

If we multiply the minutes shown above by number of cars in the respective switching services as shown in Form A and reduce the result to hours we should approximate the number of switching locomotive hours reported.

We have made this compilation for railroads wholly in Southern ter· ory and wholly in Eastern territory excluding New England and Northern Illinois, and the following comparison results:

Southern Territory: Switching Locomotive Hours Developed on basis of Form A Factors—4,319,735. Reported Train and Yard Switching Hours—3,259,401. Difference—1,060,334-plus. Per cent—32.53-plus.

Eastern Territory (Excluding New England and Northern Illinois): Switching Locomotive Hours developed on basis of Form A Factors—17,364,887. Reported Train and Yard Switching Hours—18,032,594. Difference—667,707-minus. Per cent—3.70-minus.

Thus the time elements which have been used as a base for the factors applied nationwide produce total switching hours that exceed switching hours in the South by 32.53% and fail to equal the Eastern carriers' switching hours by 3.70%.

2. Cars handled in various switching operations on in-
[fol. 953] dividual roads are multiplied by car-day factors obtained from the nine switching studies in the west—to develop switching car days. (Schedule A—Sheet 3—Column 7).

Carrier terminal and connection terminal switching, industry, team track and freight houses—0.50 days. Interchange switching per carrier—.33 days. Intertrain and intratrain switching—.33 days. Detention for loading or unloading, but not both, at industry and team tracks—1.75 days. Detention for loading or unloading at freight houses—.50 days.

Comment: The nine western switching studies are again used to determine for the entire country what are the representative number of car days applicable to the various classes of switching. There is no basis for assuming that the eastern roads perform on a parity with the western roads when it comes to handling cars through the different kinds of terminal operations with the delays incident thereto. The total car days for a year was determined through the "serviceable cars on line", and a tabulation by territories in the east shows the disparity between the total of the running and switching car days through the use of

the formula factors and the result of serviceable cars multiplied by number of days in a year, as follows:

Eastern Territory (Excluding New England and Northern Illinois): Active Car days from Form A (Schedule [fol. 954] A, Sheet 3, Column 11—114,019,521. Serviceable cars on line x, 365 days, 229,297,745. Difference, 115,278,-224-minus. Per cent, 50.27-minus.

Southern Territory: Active car days from Form A (Schedule A, Sheet 3, Column 11), 32,972,448. Serviceable cars on line x, 365 days, 55,551,905. Difference, 22,579,457-minus. Per cent, 40.65-minus.

Pocahontas Territory: Active car days from Form A (Schedule A, Sheet 3, Column 11), 17,709,290. Serviceable cars on line x, 365 days, 37,742,095. Difference, 20,032,805-minus. Per cent, 53.08-minus.

3. Cars handled in various switching operations on individual roads are multiplied by miles run in normal terminal movements, obtained from an engineering study by Bureau of Valuation, Interstate Commerce Commission from terminal layouts of fifteen terminals in the United States, to develop switching car miles. (Schedule A, Sheet 3, Column 4). Carrier terminal and connection terminal switching, industry and team tracks—4.0 miles. Carrier terminal and connection terminal switching, freight houses—3.5 miles. Interchange switching per carrier—2.75 miles. Intertrain and intratrain switching—1.00 miles.

Comment: The 15 terminal layouts used in the engineering study were in the following cities: 6 in the East, 3 in the South, and 6 in the Western Section, namely: Boston, [fol. 955] Baltimore, Philadelphia (including Camden), Detroit, Cincinnati, St. Louis and East St. Louis, Memphis, New Orleans, Atlanta, San Francisco, Portland, Kansas City, Denver, Houston and Minneapolis. The results of scaling the layouts were totaled for the 15 cities and divided by 15 to obtain a simple average for the country. It will be noted that New York and Chicago are omitted and that the cities in the East were not treated sparately to obtain the average for the East, and the same for the South and West. It is difficult to understand the value of a factor taken from maps by individuals whose familiarity with actual conditions in the terminals must be very limited.

4. Count of cars—For industry and team track switching a factor of 1.0 used as ratio of empties spotted and switched out to loads. (Schedule A, Sheet 3, Column 3.)

Comment: It is stated that this ratio was based on fragmentary evidence appearing in the nine switching cases. The studies showed 10 points out of 24 switching locations where the ratio of empty to load was 1.00, the balance ranging from .53 to .98. No large terminals in the Eastern portion of the country were considered, also as the straight average for the 24 switching locations is .86 it would seem that the ratio is slightly overstated and should not be used on a nationwide basis and certainly does not represent switching conditions on individual railroads. A change in [fol. 956] this ratio could affect the running and terminal costs and the costs of carload and less carload traffic.

5. Count of Cars—For freight house switching a factor of 0.80 used as ratio of empties spotted and switched out of total loads spotted and switched out. (Schedule A Sheet 3—Column 3). Comment: The only evidence available on ratio of empties to loads for freighthouse switching was in the Des Moines Switching case, I & S Docket 4418, which disclosed 95 empties to 176 loads or a ratio of 0.54. Nevertheless, based upon the judgment of the senior members of the Cost Section, the formula uses 0.80.

6. Count of Cars—For non-revenue switching the number of carloads was multiplied by 2 at total loaded cars handled in non-revenue switching. A factor of 1.0 used as ratio of empties to loads to determine total cars handled in non-revenue service. (Schedule A—Sheet 3—Column 3). Comment: The factor of 2.0 assumes that non-revenue loads are local to one line. There are many roads which are dependent on shipments of company materials originating on connecting roads. A nationwide factor is not applicable to non-revenue traffic by individual roads.

7. Count of cars—For intertrain and intratrain switching a factor of 150 miles per switch handling used as a divisor to divide the total loaded car miles for an individual road to obtain number of loaded intertrain and [fol. 957] intratrain switching. (Schedule A—Sheet 3—Column 3). Comment: There were three Western cases used to arrive at the distance between terminal handling—road train to road train. It would seem that the experience

in the Western section of the country for specific commodities would not apply to all shipments moving in the territory of the thickly populated eastern section with its several large and small railroads.

8. Station Service—Separation of clerical expenses (that portion of expenses of station employes—other than platform labor—which has been assigned to station service on basis of factors, 15% running, 85% station service) between carload, clerical and less carload, clerical on basis of consignments applying weight of five to a carload consignment and a weight of one to a less carload consignment. (Schedule D—Sheet 1—Line 2—footnote 1). Comment: These factors were developed from studies made in California, and they were also nationwide and the same in Form B—Automobile Formula—some roads have found other factors more representative of actual conditions on their properties.

III. Methods used to allocate expenses on individual roads. 1. Locomotive Depreciation—Apportioned between road and yard on weight of locomotives as assigned to the two services respectively. A road locomotive is weighted [fol. 957-A] by factor 1.2—A yard locomotive by factor 1.0 (nationwide) (Schedule A, Sheet 2, Line 10). Comment: The assignment basis between road and yard services was taken from Schedule 417, I. C. C. Annual Report, and the weighting was based upon an engineering study by the Bureau of Valuation. The number of locomotives in actual road and yard services reported in the same schedule of the annual report are not the same as the "locomotives assigned."

The following differences are cited as examples and do not indicate that differences do not exist on other railroads:

	Road Service		*Switching Service*	
	Assigned	*In Service*	*Assigned*	*In Service*
P. R. R.	3,644	2,884	624	1,305
B. & O.	1,688	1,481	314	506
C. & O.	682	596	126	197
N. Y. C.	2,218	2,176	948	1,050

2. Train Switching—Apportioned on basis of yard operations. (Schedule A, Sheet 2, Line 20; Schedule C, Sheet 2,

Line 9). Comment: Throughout the formula the development of train switching is mostly on basis of yard operation, by applying the yard unit costs to train switching service. Train switching at way stations is handled by road crews and road locomotives. This would have a tendency to understate the train switching costs as the two operations are not comparable in many respects. It would [fol. 958] seem that running service may retain some of the cost belonging to train switching.

3. Trainmen (account 401)—Apportioned between running and train switching on basis of train miles and train switching miles. (Schedule C, Sheet 2, Line 13). Comment: This apportionment results in understating the portion applicable to train switching due to the difference in running speeds. For example, for the Eastern District the average freight train miles per train hour, including train switching at way stations, is 15.3 for 1939 as per O. S. Series No. 169-A issued by the Association of American Railroads. If the train switching hours at way stations are excluded the average train miles per train hour in running service becomes 21.2 compared with 6 miles per hour for train switching or a ratio of slightly over 3½ to 1. Therefore, the use of train miles to apportion earnings of trainmen could only be justified if the average hourly earnings of trainmen in running service were equal to over three and one-half times the hourly earnings of trainmen in train switching service, which is not the case.

4. Signals and Interlockers—Maintenance and Depreciation—Repairs and depreciation are apportioned all to running service. (Schedule B, Sheet 2, Line 13). Comment: This account would cover any signals or interlockers controlling yards as well as running tracks, therefore, a [fol. 959] separation should be made.

5. Station Service—Number of L. C. L. consignments used to separate clerical expenses between carload and L. C. L. (Schedule D, Sheet 1, Line 11, Footnote 5). Comment: The number of L. C. L. consignments is developed by dividing the L. C. L. tons originated and terminated on the respective railroads reported in Schedule 541 of the Annual Report by the estimated average weight of L. C. L. shipments developed in A. A. R. study September 8 to 14, 1939. The I. C. C. requested the estimated average weight of

L. C. L. shipments under date of November 19, 1940. The P. R. R. advised the average weight was 462 pounds which was the average for all L. C. L. shipments.

In form A, Dr. Edwards overlooked the fact that the L. C. L. tons reported on line 710 Schedule 541 of annual report includes only L. C. L. shipments of less than 10,000 pounds. Therefore, the average weight of L. C. L. shipments of less than 10,000 pounds should have been requested. On the P. R. R. this is 421 pounds and would have resulted in a count of 18,910,613 consignments for the P. R. R. compared with 17,232,398 as shown on Form A or an increase of 1,678,215 consignments.

6. Loss and damage payments for the year was subtracted from total of account 418—Loss and Damage—Freight and remainder was assigned to General Overhead. [fols. 960-961] (Schedule E, Sheet 1, Line 8). Comment: Since some roads charge Loss and Damage on an accrual basis the method of deducting actual payments from total of this account does not produce the true amount of General Overhead. This resulted in an overstatement of $660,382 for the Pennsylvania Railroad as follows: General overhead—Loss and damage—computed as follows:

Account 418—Loss & Damage		$4,465,313
Less actual payments	$3,059,977	
Less Miscellaneous Charges	372,477	3,432,454
(Schedule E, Sheet 1, line 8)		1,032,859

Should be:

Account 418—Loss and Damage	4,465,313
Less: Loss and Damage Reserve Accruals	4,092,836
General Overhead	372,477

7. Switching Expenses apportioned to various switching services. (Schedule H, Sheet 3): Comment: Lines 23 and 24—columns 2-8. Number of cars receiving intertrain and intratrain switching includes non-revenue cars. Since this sheet provides for apportionment of certain switching expenses to various switching services chargeable to revenue traffic, the non-revenue cars should be excluded from the computations in line with footnote 3 providing for omis-

sion of non-revenue cars receiving carrier terminal switching service.

[fol. 962] IV General Comments. (a) The cost scales are based on the experience of the year 1939. The comparison of costs scales for the various territories based on the year 1939 for the purpose of adjusting rates effective in the future is subject to severe criticism as the changes in volume of traffic, wage scales, taxes and material prices affects the different district in varying degress. This is shown by the percentage changes in amount of Operating Expenses, Taxes and Rents per service units for the year 1941 when compared with 1939:

	Gross ton mile (Cars, contents and cabooses	Loaded Car Mile	Net Ton Mile (Revenue and Non-Revenue
Eastern District	D 3.95%	D 3.34%	D 7.96%
Pocahontas Region	I 6.94	I 6.89	I 4.35
Southern Region	D 3.44	D 0.53	D 8.41
Western District	D 10.16	D 8.32	D 14.69

(D—Decrease; I—Increase.)

It will be noted that the amount of operating expenses, etc., per gross ton mile for the Western District has decreased 10.16% while for the Eastern District the decrease amounts to only 3.95%. A similar condition exists for the other two service units. The difference appears to be due principally to the fact that it was not necessary to increase the number of trains in the Western District to the same extent that it was in the Eastern District to carry [fol. 963] the additional traffic in 1941. This theory is supported by the heavier loading per train mile as shown by the percentage increase of 15.31% in the number of net ton miles per train mile (ordinary and light) in the Western District for 1941 when compared with 1939, while in the Eastern District an increase of only 10.70% existed.

(b) It is an accepted fact that maintenance of way and structure expense for one year is not representative—5-10 or more years are used in most studies. Equipment expenses are equally not representative for one year, therefore, the year 1939, which has been used to develop the cost scales, could not produce results which may be con-

sidered as representing average operating conditions on any single road.

(c) In several instances Dr. Edwards applied percentages based on averages of several roads to other individual railroads. This practice ignores the fact that conditions may vary on different railroads.

(d) The Eastern carriers do not subscribe to the valuations for Eastern Lines used by Dr. Edwards in his studies which were developed by the Bureau of Valuation.

(e) The following clerical errors were noted in the compilation of Form A for the Pennsylvania Railroad, which would have an appreciable effect on cost scales for the Eastern Territory:

Schedule A, Sheet 3, footnote 4—car days in running [fol. 964] service—line (e) caboose car days reads 898,285 should read 89,828 line (f) Total car cars reads 6,501,784 should read 5,693,327.

Schedule A, Sheet 3, footnote 8—Loaded cars receiving interchange switching: line (d) tons in thru cars not worked—reads 130,906,002; should read 1,309,060. Line (f) cars not worked at interchange—reads 21,389,870; should read 213,899. Line (g) Total cars—reads 24,334,088; should read 3,158,117.

Schedule A, Sheet 3, line 9, column 3—Empty cars receiving interchange switching: Since the number of empty cars is based on number of loaded cars the above described error affects this item as follows: Total empty cars reads 15,403,478; should read 1,999,088.

The correction of these errors when carried through the cost scales produced the following differences in the terminal costs for carloads in company owned equipment for the Eastern Territory (excluding New England and Northern Illinois).

	Cost Level II	Cost Level III (b)	Cost Level V (b)
	Oper. Exp. Rents & Taxes	Oper. Exp.—Rents Taxes—Return 5¾% C. L. Portion	Oper. Exp.—Rents Taxes Pgr. LCLDef. Ret. 5¾% all prop.
Original	$19.12	$24.86	$30.60
Corrected	21.06	27.38	33.70

Mr. Eshelman: That is all with the witness on direct, [fol. 965] Mr. Chairman.

Chairman Aitchison: Cross-examine.

Mr. Smelker: With respect to the detail portion of this statement, Mr. Chairman, I take it that Dr. Edwards will have an opportunity to put in rebuttal at the time the rebuttal testimony is being put in.

Chairman Aitchison: Yes.

Mr. Smelker: I have some questions.

Cross-examination.

By Mr. Smelker:

Q. Will you first refer, if you please, Mr. Heywood, to page 4 of your statement.

A. 4?

Q. Yes.

A. Yes, sir.

Q. Referring to the center of the page there, where you show two columns, one headed "Minutes", and the other headed "Weight"? I believe you understand, do you not, that Dr. Edwards, in preparing his exhibits, used weight only? Do you have any comment to make in that respect?

A. You say he only used weight?

Q. He used weight only, and not minutes.

A. Why, no, sir, I do not have any comment to make. I did not say that he did use minutes.

Q. But in making the computation which you have set forth here, you do use the minutes, do you not?

[fol. 966] A. I simply say here that if we multiply the minutes shown by the number of cars, and reduce the result to hours, we approximate the number of switching locomotives hours reported.

Q. Now will you refer to page 9 of your prepared statement, please.

A. Yes, sir.

Q. At the top of that page, you have four columns set out; two, under Road Service, Assigned and In Service; and similarly under Switching Service, Assigned and In Service.

A. Yes.

Q. Now will you tell me please what is the source of the material used in the first and third columns, under Assigned?

A. The Interstate Commerce Commission's reports.

Q. How?

A. The annual reports of the Interstate Commerce Commission.

Q. Does not the annual report, both for road service and switching service, show locomotives in service only?

A. No, sir. That is not correct. It shows locomotives assigned also.

Q. Now, taking the first line, under the right hand heading, Switching Service: You show 624 assigned, and 1305 in service.

A. Yes.

Q. That, then, leaves 681 that have been assigned over in [fol. 967] road service. Will you explain that to us, please.

A. That means to me that road service engines were used in switching service, and are in switching service, even though they were not assigned to switching service.

Q. Then they were switched back?

A. They still continue as road locomotives, as far as our records are concerned, from an assigned standpoint; but they take in use in switching, and that is what "In Service" means.

Q. Is that based on daily operations, or on annual operations, Mr. Heywood?

A. That is based on the requirements of the Commission, in the annual report, but to say now exactly whether that is on the basis of an average daily or monthly, I am not in a position to do at this time.

Q. Which figures then do you believe that we should use; the "In Service" or the "Assigned"?

A. Why in my judgment, I would say that the right ones to use, as between road and switching, would naturally be those that we used in the service.

Q. Is it your understanding, Mr. Heywood, that Dr. Edwards used in his study the "In Service" locomotives rather than the "Assigned"?

A. As I understood it, the "Assigned" were used. However, I do not have the detail here before me at this time.

[fol. 968] Q. In compiling these figures, did you use Classification 417 of the annual report?

A. Yes.

Q. Now down at the middle of the page, it says: "Equipment in Service of respondents." Can you explain the difference in the two columns, after that comment?

A. I might be able to do so if I had the report in front of me here. If I understand your question correctly, you refer to the schedule at the bottom of page 405, as to the average number of locomotives in service. Is that correct?

Q. What we are trying to get clarified now, Mr. Heywood, is just what your criticism is aimed at, in this statement at the top of page 9. Dr. Edwards tells me that in the preparation of his study, he used locomotives in service, as carried in that classification of the annual report, 417.

A. Well, the main point in this so-called criticism of the formula is that the "In Service" as you state were used by Dr. Edwards, and the "Assigned to road and switching Service" were not. There is a considerable difference, in our opinion, in the class of locomotives being used as between road service and switching service, and the difference, as between the "Assigned" and the "In Service" represents the switch of the road and switching locomotives. The proper weight evidently could not have [fol. 969] been given to the fact that switching locomotives are not usually in the class, as far as weight is concerned, of road service locomotives, although we admit that in many instances our road service locomotives are used in certain switching.

Q. Now will you turn to page 13 of your prepared statement please.

A. Yes, sir.

Q. And referring particularly to the statement at the bottom of the page: Did you use less than carload traffic only in making up this statement?

A. Do you mean, under (e)?

Q. I mean, the statement at the bottom of the page.

A. The statement at the bottom of the page is caused by the effect of changes made, due to discrepancies discovered in the detail of the information compiled by the Pennsylvania Railroad.

Q. No. What I am asking you, Mr. Heywood, is this: Does the statement consist of data taken in connection with less than carload traffic, or carload traffic?

A. I do not follow you.

Q. In other words, what I mean is this: Does the correction apply to carload traffic, or less than carload traffic?

A. The correction applies to terminal cost, as displayed for the Eastern territory, of $19.12, in the exhibits filed at St. Louis. With those corrections, we made corrections [fol. 970] to correspond, resulting in a change from $19.12 to $21.06. That indicates, as I recall it, the terminal cost per car.

Q. But you still have not answered my question, Mr. Heywood. The question is, does that cover carload traffic or less than carload traffic? That is, does the correction cover carload or less than carload traffic,—I mean, the correction which you have shown at the bottom, from $19.12 to $21.06?

A. Oh. The correction covers, as far as I am able to recall at the moment, the entire set-up of the cost of moving a car into a terminal, or out. It affects the entire set-up.

Q. Both carload and less than carload?

A. Everything.

Q. Is it not true, Mr. Heywood, that the correction is worked out only in connection with less than carload traffic and not carload traffic?

A. To give you a definite statement as to that just at this moment, Mr. Smelker, I would have to go back to the rough papers,—which I have in my brief case, and which I can dig out for you, if you wish.

Mr. Smelker: That is all.

By Mr. A. L. Reed:

Q. Mr. Heywood, as the result of the studies which you and your Committee made, did you reach any conclusion as to whether or not the cost scales of Dr. Edwards for the handling of boxcar traffic were too high [fol. 971] or too low?

A. I am not a traffic or rate man.

Q. My question, Mr. Heywood, related to the studies which you develop concerning the detailed data that Dr. Edwards used in his cost study, and I am speaking now of the cost scales presented by Dr. Edwards.

A. And I am answering you, in that I did not make and I am not going to make, any statement as to whether

they are too high or too low. I am simply commenting on the formula, as it has been submitted in evidence, by Dr. Edwards, from an accounting standpoint only.

Q. Now my first question, Mr. Heywood, was if you had reached any conclusion with respect to whether the cost scales of Dr. Edwards for the handling of boxcar traffic were too high or too low. Now, if you have not reached any conclusion, then I will not have any other questions.

Chairman Aitchison: I do not think it is exactly wise, Mr. Witness, for you to say that you are not going to make any statement, until you answer the question and tell us if you know anything about it. You might change your mind.

The Witness: I thought I answered his question first, Mr. Chairman, by saying that I am not a traffic man, or a rate man.

Chairman Aitchison: That does not answer the question. The question which counsel asked you first, and which he is [fol. 972] still pressing, was as to whether or not you had come to any conclusion with respect to whether the Edwards' cost figures, with respect to the handling of boxcar traffic, resulted in a scale that was too high or too low. That is not a rate matter at all. Now you either have come to some conclusion in the matter, or you have not.

The Witness: I came to no conclusion.

Mr. A. L. Reed: Thank you. That is all.

Chairman Aitchison: Is there further cross examination?

By Mr. Cotterill:

Q. Mr. Heywood, if the studies were to be corrected in the way you suggest, what would be the effect of the corrections which you do suggest? Would the effect be to increase or lower the net result of the Edwards' computations?

A. I do not know the final answer to that. Some of them would possibly boost the cost, and others would reduce it.

Q. Have you checked the trend of your suggested corrections enough to know whether the net result would be an increase or a reduction?

A. No.

Q. Would there be any perceptible difference, in your opinion?

A. I think, if anything, it might increase the cost.

Mr. Cotterill: I would say so, too. That is all.

Chairman Aitchison: Have you anything further, Mr. [fol. 973] Eshelmen?

Mr. Eshelman: No, Mr. Chairman.

Chairman Aitchison: You may stand aside.

(Witness excused.)

Mr. Norman: If the Commission please, I understand that is all the evidence of the Official Lines. It was understood that Mr. Hawkes would be subject to recall, for cross examination. If this seems to be the appropriate time, I would be glad to ask him a few questions.

Chairman Aitchison: Is Mr. Hawkes available?

Mr. Healy: Yes.

N. W. Hawkes, recalled:

Cross-examination.

By Mr. Norman:

Q. Mr. Hawkes, as I understand it, you presented your testimony on behalf of the Official Territory Lines. Is that correct?

A. Yes.

Q. On page 11 of your prepared statement, you say: "In dealing with these interterritorial rates, we cannot overlook the fact that, relatively speaking, there has been little complaint about them from shippers." What do you mean by "relatively speaking"? Relative to what?

A. Well, I mean by that, that so far as we have knowledge, there have been but very few complaints from shippers.

[fol. 974] Q. You have defended quite a number of them before the Interstate Commerce Commission, have you not?

A. That is probably so, yes.

Q. Well now, when you say "relatively", do you mean to say that there have not been more complaints about interterritorial rates, than there have been about your intraterritorial rates for example?

A. Well, I did not mean to say that there have not been complaints; no, sir, but I meant to say that we have not been deluged with them.

Q. But when you say "relatively speaking", relative to what, do you mean?

A. Well, I am giving you that further explanation, as an interpretation of "relative."

Q. All right. Now let us go to your next sentence. "On the whole, the Eastern carriers, in cooperation with the carriers operating in other groups, have published rates or participated in rates necessary to meet the necessities of the shippers." Now I will ask you if, on the contrary, the Official Territory Lines have not persistently refused to join in rates from the South into Official territory, made on the Official territory basis?

A. Oh, no; I could not subscribe to that.

Q. Well then, will you tell me when and where you have agreed to that?

[fol. 975] A. It has been our purpose all along to cooperate with our Southern carrier friends in making rates from the South to the North. We are always ready to consider any proposal that the Southern carriers submit to us.

Q. Ready to consider it?

A. Yes, and I think we have done so.

Q. Yes, but tell me any instances in which you have agreed with them that would establish such rates?

A. Oh, just at this moment I cannot cite any particular cases, but I can say from my experience that there have been many.

Q. You refused to join with them on all of those commodities that were involved in the so-called Southern Governors' Case, did you not, the case of the State of Alabama against New York?

A. I do not deny that we have sometimes nonconcurred in proposals that we have received, but each one has been disposed of on its individual merits.

Q. Yes, but have they not all been disposed of in the same manner; that is to say, that you would say you would not do it?

A. No, sir, I cannot say that that is true.

Q. Well now, specifically——

Chairman Aitchison: If I may interject.

Mr. Norman: Yes.

[fol. 976] By Chairman Aitchison:

Q. Does the fact that the Monon has been able to participate in the traffic, had anything to do with that determination?

A. I am very sorry, but I could not quite hear all of that.

Q. I asked you if the fact that the Monon was able to participate in the traffic, would have anything to do with the ultimate decision in some of those cases?

A. It might have had.

By Mr. Norman:

Q. And the Illinois Central. But specifically now, have not your lines just recently declined to join the Louisville & Nashville, and the Illinois Central Railroad, in establishing rates from Owensboro, Kentucky, made, not on the straight basis obtaining in Official territory, but made an arbitrary over? You have declined to join in those rates, have you not?

A. I am not prepared to say what we have done in connection with that particular proposition.

Q. Well now, I will leave you with this final question: Can you cite me any instance where, in the last three years you have agreed to it,—and when I say "agreed to it" I mean, where you have agreed to join the Southern lines in rates on manufactured commodities moving on class rates into Official territory from the South, on the Official territory basis?

A. I cannot at this time, without reference to our rec-
[fol. 977] ords, cite any particular case where such has been done, but I am quite sure that there have been such cases.

Mr. Norman: That is all.

Chairman Aitchison: Mr. Cotterill.

By Mr. Cotterill:

Q. Mr. Hawkes, to what do you attribute the considerable concentration of industrial manufacturing industries in Official territory?

A. Well, there are lots of things that, I would say, would contribute to that. There are geographical conditions, and markets, and many conditions, including perhaps satisfac-

tory freight rates; but that is not a major feature, as we understand it.

Q. Should we understand that insofar as you mention satisfactory freight rates, you do not attribute the considerable concentration of industry in Official territory to the influence of freight rates?

A. No, I would not put that as one of the prime reasons for such concentration.

Q. Then would it be your alternative conclusion that a change in the freight rate structure would not have any significant consequence in the destiny of the industrial area that you speak of?

A. It depends on how the freight rate might be changed.

Q. Having in mind what, for instance?

A. Well, having in mind this—which perhaps should be [fol. 978] accepted as a modification of the first answer: We do know, from general experience, that there has been a decentralization within Official territory, due somewhat to the change in freight rates as a result of Docket No. 15879; and to the extent, therefore, that freight rates might again be changed there might be that possibility of further relocation of industry.

Q. Well, if a change of freight rates might substantially influence the relocation of industry, could we easily reconcile that fact with your statement that the present location of industry is not the consequence of the present freight rates?

A. Well, I tried to modify my first answer.

Q. Yes.

A. By saying that it does have some place in the picture.

Q. Yes. In other words, you feel that to some substantial extent, perhaps, the existing degree of industrial concentration may be attributable to the freight rate structure.

A. It might have something to do with it, yes, sir.

Q. Yes. Now, have you gentlemen in the North, in the exercise of a certain quantity of veto power, been seeking to perpetuate that condition through your depression of the rate level wholly within Official territory?

A. I would not say so, no, sir. We have endeavored always to be fair—fair to ourselves, as well as to our connec- [fol. 979] tions.

Q. What, in substance, is that test of fairness in connection with the matter we are discussing, namely, the result-

ing influence of rates on the industrial development, or location?

A. Well, it behooves any railroad or any group of railroads, to keep on their own line or lines, as much of industry as they can, of course, because the situation might very soon be otherwise.

Q. And so, looked at from that angle, you gentlemen have exerted the power you possess, looking to the element of self-interest to which you have referred; is that correct?

A. Naturally. We endeavored to encourage industry to remain with us.

Q. As an indication of that encouragement, I would like to ask you if this is a correct factual statement, very briefly: Apart from the general percentage rate increases of recent years, have you gentlemen not absorbed, out of your then existing merchandise rates, the full expense to which you were put in performing or obtaining collection and delivery service, except on the very, very short hauls?

A. I would not know, because I am not in the accounting end of the business.

Q. Well, did you rearrange your class rate structure in order to make provision for the assumed expense of col-
[fol. 980] lection and delivery service?

A. My recollection is that we did not.

Q. Except on the very short hauls, where there was a minimum charge, where you made a 40 to 45-cent minimum charge?

A. Where we fixed a minimum charge—yes.

Q. Yes. Now, in addition to that, have you not in your territory for a period of five or more years, been engaged in constant downward reductions of your intraterritorial rates on merchandise of this character, both less than carload?

A. We have made some reductions. I would not say that they are constant, but there have been reductions, of course.

Q. Have they not been very widespread, and very numerous?

A. I would say, they may have been quite numerous, yes.

Q. Would it be an exaggeration, in your opinion, were it to be suggested that at least 90 per cent of the traffic, merchandise traffic, I am speaking of, provided for in the freight classification, does not move under the freight

classification; or if not 90 per cent, would it be 80 per cent, or 85 per cent, or what?

A. I am not sure that I understand your question. If you are asking me if my understanding is that 90 per cent of the merchandise traffic does not move under the classification—is that it?

Q. Yes. Do you think that is too high?

Chairman Aitchison: What do you mean by "merchan-
[fol. 981] dise traffic", Mr. Cotterill? That might have one meaning in the accounts of the Commission, and another somewhere else.

Mr. Cotterill: That is an eminently proper inquiry, your Honor. We have been all trying to grope for a suitable term descriptive of what might be called package freight, whether loaded in less than carload or carload quantities.

By Mr. Cotterill:

Q. As so defined, at any rate, Mr. Hawkes, that is what I am speaking of.

A. I am not familiar with statistics showing the relationship of that traffic that you are discussing, as between that covered by straight class rates, and that covered by something other than class rates.

Q. Would you say that you have in effect so-called classification exceptions on literally hundreds of commodities?

A. Yes—moving in carload quantities generally.

Q. And also less than carload quantities?

A. Not to the extent that we have them on carload.

Q. Now then, Mr. Hawkes, putting together the absorption of the collection and delivery expense, and the circumstance of these widespread reductions in rates that have occurred, are they demonstrations of the purpose of you gentlemen to serve your self-interest in building up or retaining industries on your lines?

A. Well, assuming that your statement is correct with
[fol. 982] regard to the extent to which this practice has prevailed, I think it is only good business to say that every reasonably fair effort is made by the Official lines to retain industries on their lines and in their territory.

Q. Do you fear a substantial relocation of industry, were your rate level on manufactured articles within Official territory materially increased?

A. I think that is a very possible result.

Q. Is that a circumstance which has restrained you gentlemen from undertaking an increase, despite Dr. Edwards' showing that you are operating on a basis 35% more than your revenue, and are even 15% underneath your out-of-pocket expense?

A. Well, again, I am not an accountant, and I am not prepared to say whether the conclusions which you draw from Dr. Edwards' statement are correct, or not; but assuming that they may be correct——

Chairman Aitchison: They really do not have any part in the question. The question is only as to whether you have been restrained by the desire to see that business is not driven off of your lines by an increase in the rates on this merchandise traffic, regardless of whether it is shown in Dr. Edwards' statement one way or the other. That has nothing to do with it.

The Witness: Well, I understood the question to go as [fol. 983] to the restraint that might have been exercised because of the cost element alone. There are many other things that might restrain us. It would be perfect folly for us to increase our rates on less than carload traffic unless we at the same time had the comfort of knowing that our competitors were likewise increasing their rates.

By Mr. Cotterill:

Q. What is the situation in that regard today, so far as rate levels are concerned, as between you and the motor carriers?

A. I am satisfied today that if we increased our less than carload rates, if you please, it would drive business away from the rail carriers.

Q. And what is it that makes you feel that way?

A. Because we have no assurance that the truck rates, that are competitive with our rail rates, would likewise be increased.

Q. If you had that assurance, would it affect your judgment as to the proper course to follow?

A. We would have to be satisfied, not only with respect to the rates of the common carrier truck operators, but also the contract carriers and the private carriers.

Q. Have you gentlemen undertaken to measure the relative significance of those last two items?

A. In a general way only—yes, sir. We are satisfied that the private carrier causes us considerable trouble, and [fol. 984] the reflection of his rates gets into the contract carrier adjustment, and then up into the common carrier truck adjustment.

Q. Well, would you suggest, Mr. Hawkes, that the potentiality of shipper truck operation is such as to control your entire merchandise rate structure throughout Official territory?

A. I would say that it would, yes, sir, and I would like to add—which I did not have the opportunity to do a moment ago—that we are confronted with a situation intrastate over which the Commission, the Interstate Commerce Commission, has no jurisdiction, in New York State and Pennsylvania, it being very extensive in each instance, and we have considerable trouble in that direction.

Q. Have you been advised by your accountants concerning the sufficiency of your present revenue compared with your out-of-pocket cost on merchandise traffic in Official territory?

A. No.

Q. Have you had no personal concern as to whether or not you are spending $1.10 for each $1 that you take in?

A. Well, if you are talking about the less than carload structure as a whole, we are generally satisfied that we are not losing money by it. You cannot pick and choose, in spots, on less than carload traffic.

Q. Was it your understanding that Dr. Edwards picked [fol. 985] and chose spots, or did he deal with Official Classification Territory as a whole?

A. I have not studied Dr. Edwards' statements, but I have understood that he covered the entire Official territory.

Q. Yes. Well, on that point, as a conclusion, sir, if you were so advised, that, according to his neutral studies, your present rate level on merchandise traffic is more than 30% less than your cost of performing the service, and is nearly 15% more than your extra out-of-pocket cost, is that what you would regard as good business?

Mr. Healy: Just a moment. I object to that question, if the Commission please. I think Mr. Cotterill is drawing the wrong conclusion from Dr. Edwards' exhibits.

Chairman Aitchison: Oh, I think that is a permissible objection.

Mr. Cotterill: I think that is true, your Honor.

Chairman Aitchison: Of course you have got to bear in mind that Mr. Hawkes is simply the agent of these carriers.

Mr. Cotterill: But he is a mighty distinguished and powerful agent.

Chairman Aitchison: I understand that, but I do not think, if Mr. Thurman Arnold were in the room, he would say that Mr. Hawkes' opinion would control.

Mr. Cotterill: No, he probably would not, your Honor, but we have got to fight it out some day, and he has indi- [fol. 986] cated that he is ready to fight, and so are we, so we are in the frame of mind to say, "Come on: let us get it over with.

By Mr. Cotterill:

Q. At any rate, sir, if there is to be followed any more, as now in existence, a class rate structure, should you not treat this multitude of exceptions as forming a part of the present class rate structure? What is left to your class rate structure, in other words, if you try to distinguish it from your exceptions, that simply bear a different percentage to first class than would the more familiar classes?

A. I take it that you are now getting away from less than carload rates and referring more particularly to carload rates; is that correct?

Q. To whatever extent your exceptions apply, either way. I do not care, for the purpose of my question; either one.

A. Well, if I understand your question—and perhaps I do not——

Chairman Aitchison: I do not, either.

Mr. Cotterill: Then I will put it differently.

By Mr. Cotterill:

Q. In your Official Classification provision is made for how many classes?

A. There are six classes, and then there are two other classes, that might make it eight classes.

Q. Yes. And at this time, generally speaking, they bear a determined percentage to each other, and to first class, do [fol. 987] they not?

A. Yes.

Q. Now what have those exceptions done, other than to choose a different percentage of first class for the particular commodities?

A. Well, they have found a rating for the given commodities that will enable the carriers to continue enjoying that traffic, and that rating is expressed in a percentage of first class.

Q. Yes. And when they are so instituted, and considering the fact that there are hundreds of them, wherein do they differ from the classification ratings? I do not mean, now, in the amount, but in principle. Is not a classification rating——

Chairman Aitchison: Just a moment, Mr. Cotterill. One question at a time.

A. I will try to answer the question which I understood you to ask first, with respect to the place that a commodity rating, on a percentage of first class, occupies in the class rate scale. I think it is in fact a part of the class rate scale.

By Mr. Cotterill:

Q. Of course. Now, finally, in your testimony, your direct testimony, you dwelt upon the rapidity with which there has been extended on all merchandise traffic, the stopping of the freight to fill out a load, or to make a par- [fol. 988] tial load, which I think is generally called partial loading or unloading. Would you please advise the Commission whether or not, in its present extended form, it amounts to anything more than a breakdown of your less than carload rate structure in an indirect way? What else would explain it?

A. I do not interpret that practice as a breakdown of the less than carload rate structure, no sir.

Q. Well, if a shipment starts out weighing 1,000 pounds and it goes to another place, and there is put another 1,000 pounds into it, and so on ad infinitum, until you have got 15,000 or 20,000 pounds, and then along the route you begin delivering it at the rate of 1,000 pounds per stop, at a succession of stations, is that carload or less than carload service?

A. Well, I hope we do not have to handle any of the traffic in that way.

Q. Your rules provide for it, I believe.

A. I do not know that we have any such experience, where we peddle in those small amounts.

Q. Well there is no limitation upon it, I believe, in your tariff, is there? You make provision for unlimited stops for the purpose of loading and unloading, that would give the benefit of the carload rate to the final weight, subject to a charge, I think, of $5, or something like that. [fol. 989] Is that not a rather considerable break-down of the rate, at least?

Chairman Aitchison: Wait. Give him a chance to answer.

Mr. Cotterill: I was about to ask—pardon me.

By Mr. Cotterill:

Q. Is that a fact?

A. I am not certain that it is a fact, no sir.

Q. All right, sir. What is the fact?

A. My recollection is that we do permit stopoffs in transit to unload, or stopoffs in transit to add to the load, the number of stops for either purpose is limited. The inference that I gained from your statement was that we did it at every station, almost.

Q. Do you recall what you think that limitation is—or what that limitation is, on the number of stops?

A. I can only guess, because—

Chairman Aitchison: Mr. Cotterill, if your purpose is to test the general competency, knowledge and memory of the witness, that is all right; but if you want to show what the practice is, and what the tariffs are, there is a better way.

Mr. Cotterill: Well, if he has not got it readily at hand, I will not press it.

The Witness: I have not.

Mr. Cotterill: That is all.

[fol. 990] Mr. Townsend: I have one or two questions.

Chairman Aitchison: Mr. Townsend.

By Mr. Townsend:

Q. Mr. Hawkes, I have been interested in this statement that you have made, and I wanted to ask you this question: Do you consider that your rates, your interterritorial rates, are static? In other words, are they frozen?

A. No.

Q. You do make changes almost daily, do you not?

A. We make changes wherever we believe they are necessary.

Q. And in response to the needs of commerce?

A. Yes, sir,—providing we get a whole dollar out of it.

Q. Yes. I want to ask you this: Is there any definite policy that you pursue in making your interterritorial rates?

A. The only policy that we pursue is that we treat each proposition on its own merits.

Q. Let me cite you an example. You have quite recently published a rate on ammunition boxes from Minneapolis to Official territory, Trunk Line territory. Do you remember that incident?

A. No, I do not happen to remember. I cannot definitely say.

Q. Let me explain what that rate was,—and it will be later shown in the record by an exhibit. The rate that you [fol. 991] authorized, and which you published, represents 45% of the so-called Docket No. 15879 scale or the Eastern Class Rate scale. The classification in this instance provides for class-45 in Official, class-5 in Southern, and class-A in Western,—and class-A in Western is also column 45. Had they paid the column 45 rate from Minneapolis to New York, for example, the rate would have been very much higher than what you authorized and published, and that is in effect today, because the rate you published reflects 45% of the Eastern Class Rate scale. Now is that the general policy, or was that something that was just adopted in the case of that particular commodity?

A. Why, I presume that the Western Trunk Line carriers presented reasons which justified our joining in the rate which you said we did join in. As I say, I am not familiar with it, but that would be the natural procedure.

Q. Now we have had other instances where our rates from Minneapolis, and from Minnesota, have been adjusted on the same percentage of the class rates that applied locally within Official territory, and instead of applying the so-called laminated scale that applies in connection with our recognized class rates, say, from New York to Minneapolis, or eastbound, you have applied this percentage of the class rates, the so-called 15879 scale, or the Eastern Class Rate scale. Now that has not been your general policy, has it? [fol. 992] A. Our policy, our general policy, as I say, is to treat each particular proposition on the merits of the particular case.

Q. Well I want to say that what you have done has been helpful, but I wanted to ask you another question. Another thing that has been done is this: You have established rates on decorticated straw, decorticated flax straw, from Minnesota origins to Eastern territory,—that is, straw that is being used for the manufacture of cigarette papers, in the absence of foreign linen, scrap linen coming in from abroad. Now you have given the Minnesota industries the benefit of the so-called 15879 Eastern Class Rate Scale; being the percentage of the rate which was generally applicable in Official territory. Now, that is your general policy, is it not?

A. Our general policy, as I stated before, is to take each proposition that comes to us and measure every argument, and every fact that surrounds that particular proposition, and then dispose of the case on the merits of the particular proposal.

Q. Well, I have had before your Committee another proposal, and recognizing that you had in numerous instances, and that the Commission had in several instances, prescribed through rates from Minnesota, and particularly from Minneapolis, to Trunk Line territory, based on the same percentage of the class rates that applies in Eastern [Vol. 993] territory, not on the laminated scale, but on the so-called 15879 or Eastern Class Rate scale. I had in mind, when I filed this docket on woolen blankets, that I might have gained the same basis. I wanted a rate on woolen blankets in carload lots, because we ship many carloads from our plant at Minneapolis, and I found that they had third class from Southern territory to Trunk Line destinations; but we were obliged to pay first class, and we are continuing to pay first class on full carloads of woolen blankets. Now is there any reason why you should differentiate between woolen blankets and decorticated straw, or any other material, on which we are accorded this Eastern Class Rate scale?

A. No, sir. We want to dispose of each proposal in a fair way, based on the facts that surround each proposal.

Q. Well, is it a fact——

Chairman Aitchison: He has told you, Mr. Townsend, that he does not have any general policy of that sort,—applying a percentage of the Official scale.

By Mr. Townsend:

Q. Well now, I want to ask you if it is a fact that you joined the Southern Railroad in applying third class on woolen blankets from Southern territory into Official territory, and whether that would have any effect on what you would do in another territory, that wanted to have an equal basis in your large consuming market?

[fol. 994] A. To answer that question, I would have to analyze the circumstances that surrounded each of those proposals.

Q. Well, what I am trying to determine is whether I failed to give you all of the facts that you needed, or why I did not get it on the woolen blankets, and I did get it on these other commodities?

A. Well, I am not trying to evade you. I am trying to be as helpful as I can. But the question, as you have presented it, does not include sufficient — for me to give you a precise answer. I would like to have all of the facts on your woolen blankets from the South versus the North,— or the West, before me, and then I might be able to tell you why.

Q. You do not remember that particular docket?

A. No.

Mr. Townsend: What you have done so far has been helpful as far as it has gone, but it has been rather limited. Thank you.

Chairman Aitchison: Is there anything further with Mr. Hawkes?

Mr. Healy: Nothing.

Chairman Aitchison: You are excused, sir.

(Witness excused.)

Mr. Barron: If the Commission please, may we resume with Mr. Stanage at this time?

Commissioner Aitchison: Yes.

[fol. 995] B. H. Stanage recalled:

By Mr. Barron:

Q. Mr. Stanage, when we stopped last night, you had just completed your answer to Question 5 of the Commission's notice of January 9, 1940. Now Question 6 is: "The feasibility of prescribing minimum and maximum, or

precise class rates." Now, what have you to say, in answer to that question?

A. In the several class rate territories coming within the scope of this investigation, the Commission prescribed maximum class rates. Carriers have operated under these maximum rates without important difficulties. The Western carriers are opposed to the prescription of minimum or precise class rates; such rates, in effect, place the rates in a straight-jacket.

Where the Commission prescribes minimum rates the carriers are estopped from reducing their rates to meet the changing needs of commerce. The rail carriers no longer have a monopoly on transportation. The rate adjustments prescribed by the Commission should be prescribed as maximum, not precise rates. When the Commission prescribes minimum rates or precise class rates, it places an undue burden upon the carriers in instances where they seek to establish lawful rates to meet competitive conditions, due to the necessity for securing a modification of the order [fol. 996] in each case before different rates may be published. This is burdensome, expensive and results in delay.

The Commission in numerous cases has held that while it has the power to prescribe minimum rates such power should be exercised only in extraordinary circumstances or where it appears that a rate war is imminent. 81 ICC 448-472 (Sugar Cases 1922); 123 ICC 503-504 (Ex-Lake Iron Ore). The rate adjustments should be kept fluid, leaving the carriers free to make any necessary revision under such maximum rates as the Commission may prescribe if and when circumstances and conditions may justify such action. Shippers and receivers have an adequate remedy through protest and request for suspension or through the filing of a formal complaint.

Q. Question No. 7 of the Commission is: "The extent to which the class rate structure of the railroads is affected by competition encountered from motor carriers and water carriers, common, contract and private." What is your reply to that question?

A. There are no data available except as dealt with later which shows the extent to which class rate traffic of the railroads is affected by motor carriers or water carriers, common, contract and private. There are no data available showing what percentage of the total traffic consists of

class rate traffic, either for account of the railroads, motor carriers or water carriers except as dealt with later.

[fol. 997] It is an obvious fact that if there were no motor carriers or water carriers the principal traffic handled by those carriers would then be handled by the rail carriers. As the motor carriers and the water carriers handle a very considerable amount of traffic, it is evident that the competition encountered with motor carriers and water carriers has an important effect upon all traffic handled by the rails, also has decided effect upon the level of the rates of the rail carriers. The earliest authentic data showing the extent to which motor carriers participate in the handling of merchandise traffic is contained in Exhibit 111, page 25, Coordinator Eastman's Merchandise Report. This exhibit is reproduced in part on page 59, Exhibit 63. It will be noted that of the total tons of merchandise shipped or received in 1932 the railroads handled 32%, the trucks 54%, forwarders 11% and express agency 3%.

On page 60, Exhibit 63, is shown the volume of merchandise (originated) handled by the railroads of the United States for a series of years, compared with the total tonnage carload and less carload handled. There is also shown the percentage to the total as represented by the less carload traffic originated. Similar data is shown for the Southwestern Region as to traffic terminated.

On page 61, Exhibit 63, is shown the motor truck registrations for the United States and for certain Southwestern [fol. 998] States to the extent the information is available.

On page 62, Exhibit 63, is shown information as to revenue and tonnage handled by Class 1 motor carriers in the Southwestern Region for the years 1938 to 1941, inclusive, taken from the reports of the Commission. The extent to which the class rate traffic of railroads has been affected by the competition from motor and water carriers, common, contract and private, is a question which railroad managements have studied with great care, for that competition has given them great concern. Ever since the advant of motor carrier competition, early in 1922, the Southwestern carriers have encountered severe and growing competition with motor carriers, common, contract and private. For the first six or seven years of the period the trucking industry was unorganized and was handling anything it could get to haul for anything it could get for

hauling it, and going anywhere it was directed, wholly unregulated.

Prior to April 16, 1936, the effective date of the Motor Carrier Act of 1935, as to filing of tariffs, the motor common carriers were not required to publish and file their tariffs. As a result a very chaotic condition existed. The rail carriers were unable to accurately determine the level of the motor carrier rates. In their endeavor to participate in the traffic the rail carriers have made substantial reductions in the rail rates. There are no data available to [fol. 999] indicate the amount of these reductions, but they have, in many cases, been substantial.

Since the motor carrier act became effective the carriers have noted that the motor carriers in the different rate territories coordinated their ratemaking organizations and rate publication practices and at present are working closely together toward uniformity in rates, rules and regulations. They are constantly making improvements along these lines. We have noticed a trend toward conservatism. Recently the motor carriers cancelled out certain of their abatement rules. Numerous motor common carriers are now shown as participating carriers in the Consolidated Classification No. 15, Agent R. C. Fyfe's I. C. C. No. 28.

Under regulation motor carriers have come to recognize the need of a comprehensive classification so that the rating of each commodity or article may be readily ascertained and moreover that such rating may give due consideration to all elements such as value, density and risk, thus borrowing from the extensive and practical experience of the railroads. In the Southwest the motor carriers operate three tariff bureaus, viz: Southwestern Motor Carriers, Middlewest Motor Carriers and Motor Carriers Service. There is a notable tendency toward further stabilization of rates and elimination of subnormal rates and objectionable practices. Just to what extent the carriers revenues have been af- [fol. 1000] fected due to motor carrier competition, it is impossible to approximate. However, the trucks are handling a substantial tonnage.

Through improvement of rail service the rail carriers have regained tonnage and are now handling a larger volume of LCL traffic than they did a year ago. Competition with contract motor carriers is more noticeable in connection with the handling of tonnage which except for

such service would move via rail in carloads. It has been impossible for the rail carriers to compete with private motor carriers who operate or own motor vehicles making deliveries to their customers. I refer to manufacturers, jobbers and distributors in the larger centers. Dut to this class of service, short haul local business of the rail carriers has practically disappeared. As a practical matter, the rail carriers for relatively short hauls cannot offer the flexibility of service necessary to meet the needs of this class of shippers. The length of haul by private carrier varies according to the trade area served. It is my judgment, generally speaking, that the service by private carriers is limited to hauls within 150 miles. There are exceptions, for example, instances where a wholesale grocery concern will deliver its goods to its customers, and upon the completion of one of its runs its trucks will proceed to some other point to pick up a load of supplies for the return [fol. 1001] haul, the latter goods in many instances being of the type which, without such service, might move by rail in carloads.

On page 63 of Exhibit 63 is shown statement of less carload traffic received and forwarded over the Frisco from representative manufacturing, jobbing and distributing points in the Southwest for a series of years.

On page 64 of Exhibit 63 is shown the less carload tonnage received by rail at Frisco stations located in the Oklahoma City wholesale grocery trade territory by years for the 20 year period ending with 1941. These statements show the decrease in outbound merchandise tonnage from important jobbing and distributing centers in the Southwest. Note a similar showing as to inbound traffic. In my opinion, the decrease is due primarily to competition of private trucks. Figures received from other Southwestern carriers too late to be reproduced reflect the same results. Beyond the range of the shippers' trucks the distributors find the motor common carrier service in many cases, especially for hauls of several hundred miles more flexible and faster than that of the rail carriers.

The freight forwarders in connection with their concentration and distribution system have taken out of the usual package car service of the railroads a substantial annual tonnage which today, while to a large extent handled by [fol. 1002] the rail carriers, moves under so-called all freight carload commodity rates. There is a substantial

portion of forwarder freight which is accorded motor carrier service on the origin end of the carload movement. Also there is a movement by motor carrier service beyond the destination break-bulk point. This is due in both instances primarily to more flexible and faster service by the motor carriers than rail particularly for the shorter hauls.

The granting of stop-off privileges on additional commodities so that these privileges now apply on practically all carload package freight has influenced a movement in carload quantities of a substantial volume of freight heretofore handled in LCL service. On pages 65 to 70 of Exhibit 63, is shown a list of the more important commodities on which the stop-off privilege is today authorized. The liberal mixed carload commodity ratings established by the railroads have also resulted in the return to the rails of a substantial volume of less carload traffic formerly handled by the motor carriers as less carload traffic.

The development of chain stores in the distribution of merchandise has resulted in the rail carriers handling a substantial volume of merchandise in pool cars at all freight rates or under commodity mixture carload ratings heretofore handled in less carload service by rail or other [fol. 1003] forms of transportation. All of these situations have contributed to a reduction in the volume of merchandise handled by the rail carriers at less carload rates. In the Southwest the common carrier water lines handle a relatively small volume of the less carload traffic. On page 71 of Exhibit 63 is shown the tonnage handled by one water carrier.

On pages 16 to 19 of Exhibit 63 through error shown out of order in my Exhibit 63, are shown less carload rates established by classification exceptions on numerous commodities for various mileage blocks within Southwestern Scale III Territory. These represent but few of the rates established by the carriers to meet motor carrier competition. On pages 72 to 75 of Exhibit 63 is a similar showing covering carload traffic. Coordinated rail-motor service of the rail carriers who operate subsidiary motor freight lines has enabled those carriers to gain, to hold, and to improve their chances for handling an increasing volume of less carload traffic.

Q. Now, Question No. 8 of the Commission is: "The effect upon the movement of class rate traffic, traffic transported on basis of all-commodity rates, and of traffic

handled by forwarder companies." What have you to say as to that?

A. The Southwestern carriers for many years have had in effect so-called all freight rates which are used by the [fol. 1004] freight forwarders, chain store distributors and other large shippers. A history of these rates is shown on pages 76 to 77 of Exhibit 63. On page 78 is shown a table of rates. These rates are designed to meet the competition of common carrier trucks, contract carriers and private carriers.

Exhibit 111, page 25, of the Coordinators Merchandise Report reproduced on page 50 shows a summary of data secured from shippers' questionnaire-replies being received from 35,468 parties or firms, the merchandise tonnage shipped or received by such concerns for the calendar year 1932. The forwarders handled 12,578,131 tons or 11% of the merchandise shipped or received in that year. The freight forwarders assemble carload and LCL traffic by rail or truck at key points where it is consolidated and shipped therefrom under the all freight basis of rates to key points of distribution from which the traffic is shipped in LCL quantities by rail or truck. Prior to the advent of the forwarder, the traffic moved from origin to destination by rail or other modes of transportation or a combination of both.

In Freight Forwarder Investigation, Docket 27365, 229 I. C. C. 201, the Commission reviewed the activities of the forwarder and its relation to the shipping public and to the rail carriers. The effect of the application of all freight rates to all such forwarder traffic has enabled the rail [fol. 1005] carriers to regain and hold and in some instances increase the movement of traffic by rail, in competition with competing transportation agencies. One Southwestern railroad during the calendar year 1941 handled 8,437 cars, approximately 124,000 tons to 36 key-distributing points, average 14.62 tons per car. Of this total the five established freight forwarders handled 7,690 cars 112,974 tons, average tons per car 14.69, average revenue per car $254.52.

By Chairman Aitchison:

Q. Do you have any idea, Mr. Stanage, as to what the average size of those cars was?

A. It is my best judgment, Mr. Commissioner, that they were 40-foot cars. Today, on the Frisco Railway, we rarely use a car other than a standard car; but I made no direct check of that particular data.

Q. And you are very sure that they did not order a standard size car, and get a 50-foot instead?

A. I can assure you that that was not done, Mr. Chairman. We do not permit that, and they do not request it.

Q. Oh, they would not request it, of course.

A. Sir?

Q. I say, they would not request it, of course; but I am asking you if you can tell me what the average size of those cars was, and what the average size was, that was ordered, if there was a written order, or a verbal order?

A. Of course, some of the orders are standing orders, [fol. 1006] but it is my recollection, and I think I am correct, that they were standard 40-foot cars—boxcars.

Q. What are your tariffs based on; 36-foot 6-inch cars, or 40-foot cars?

A. 40-foot, 6-inch cars. There are some cases, Mr. Chairman, where they get two cars for one, under certain conditions.

Q. Well, how did you count those; as one car, or as two cars?

A. Well, of course, there would be two cars, in those instances.

Q. Were they figured as two cars here, in determining the average?

A. Pardon me, Mr. Chairman, but I will have to ask the man who made the statement, to answer that question.

Chairman Aitchison: He indicates "yes."

The Witness: Then the answer is "yes."

Chairman Aitchison: Continue.

A. It is essential that rates of this character be maintained if the carriers are to meet the competition of other transportation agencies. Shippers are constantly striving to reduce their transportation costs and wherever possible shippers of LCL traffic are consolidating their shipments into carloads using either Rule 10 of the Classification, various commodity mixture carload ratings or all-[fol. 1007] freight rates to secure the lowest transportation charges.

By Mr. Barron:

Q. Now, Question No. 9 is: "The desirability of stating separately the charges, or allowances, for pickup and delivery services where those services are performed, or allowances made in lieu thereof, on traffic moving under class rates." What have you to say as to that?

A. When the carriers inaugurated pickup and delivery service in response to insistent demands from the shipping public for a complete service they did so without the addition of a charge in the line haul rates. The result was an enlarged service to the shipper. The effect was to place the cost of this service on the rail carriers. Table 81 Annual Report of Statistics of Railways for the year 1940 shows that the cost to carriers in the Western District during the calendar year 1940 was $10,111,975.00 for pickup and delivery service. Under existing conditions with mounting costs and the rubber tire situation the carriers have given consideration to the desirability of restricting their line haul rates to station to station service, but providing for pickup and delivery service when desired at an extra or plus charge, reasonably related to the out-of-pocket cost of pickup or delivery service at the point where the service is given.

The motor carriers pickup less than carload freight from the premises of the consignor and deliver it to those of the consignee. The adaptability of the highway motor [fol. 1008] truck to a unified transportation service from store-door-to-store-door gives the motor carriers an important advantage which shippers quickly recognize. Until such time as the motor carriers make a separate charge for this service it will be difficult for the rail carriers to make any change in their present practices. Where shippers and receivers perform the pickup and delivery service and allowances are made therefor, it is desirable and in fact necessary that the tariffs definitely state the amount of the allowances paid. Present conditions do not warrant any change in the method of publication, either as to pickup or delivery service or allowances for such services.

Mr. Barron: The other questions pertain to the classification, and they will be answered by a subsequent witness.

By Mr. Barron:

Q. Now, Mr. Stanage, what have you to say about outbound rates from the Southwest?

A. During the Memphis-Southwestern Investigation commodity section hearings, 77 ICC 525, Southwestern carriers advocated the prescription of outbound rates on fruits and vegetables and on commodities produced or manufactured in the Southwest to the border points of St. Louis, Kansas City and Memphis and to points in Official and Western Trunk Line territories on a level that would enable the marketing of such commodities in competition with producers and manufacturers located at the border or in the [fol. 1009] territories mentioned. Among the commodities considered were strawberries, grapes, peaches, canned goods, furniture, window glass, glassware and vinegar. The Commission approved the position advocated by the Southwestern carriers.

In Consolidated Southwestern Cases decided April 5, 1927, 123 ICC 203-406, the Southwestern carriers again sought the same consideration on behalf of their producers and manufacturers and received approval from the Commission. Rates in conformity with these principles have been established and maintained during the past 15 years without serious complaint or objections from anyone. These principles are still observed in the establishment of rates on new commodities produced or manufactured in the Southwest.

Chairman Aitchison: I do not see what that has to do with this case, Mr. Barron.

Mr. Barron: I understand—I hope it is erroneously—that the attack is that the carriers have not given any consideration to the fostering of industry in the Southwest. Now, it is our contention that we have heretofore, do now and will continue; and it is for that purpose we are introducing it. If I am in error, I will be very happy to be corrected.

Chairman Aitchison: You are negativing something that has not yet attempted to be pointed out.

Mr. Barron: All we know, as Will Rogers used to say, [fol. 1010] is what we read in the papers and hear from the gossip. I understand that that is one of the contentions, at least, they are going to make.

Chairman Aitchison: I think we had better wait until the contention is made before you rebut it.

Mr. Barron: Very well.

Mr. Bee: Mr. Chairman: You are not striking pages 82 and 83 of his exhibit, are you, because they are very important, as shown on the statement.

Mr. Barron: I trust they will not be stricken. With that suggestion from the bench, I would like to offer Exhibits 62 and 63 in evidence.

Chairman Aitchison: Is there any objection to the receipt in evidence of Exhibits 62 and 63? (No response.) They are received.

(Exhibits 62 and 63, Witness Stanage, received in evidence.)

Mr. Barron: Mr. Stanage is ready for cross examination.

Mr. Bee: Mr. Chairman, we tried last night to study Mr. Stanage's exhibits which comprise Exhibits 82 and 83——

Chairman Aitchison: 62 and 63.

Mr. Bee:—62 and 63, and especially those last two pages. They require considerable checking. We would appreciate the privilege of being able to reserve our cross examination [fol. 1011] of Mr. Stanage until the next hearing.

Chairman Aitchison: Is there any objection?

Mr. Barron: I have no objection at all with the understanding that he will be cross examined at the beginning of the next hearing.

Mr. Bee: That is perfectly satisfactory.

Chairman Aitchison: We will see about that.

Mr. Bee: Now I would like to ask Mr. Stanage one question, at this time.

Chairman Aitchison: I said we will see about that.

Mr. Bee: You mean about the beginning of the hearing?

Mr. Barron: The reason I suggested that he be cross examined at the beginning of the hearing, Mr. Chairman, was that I do not want him to have to wait around until the last part of the hearing.

Chairman Aitchison: I know, but we cannot enter into a bargain like that at this time.

Mr. Barron: I appreciate that, but I hope you will give the request some consideration.

Chairman Aitchison: Yes.

Mr. Bee: We will be ready at any time after the hearing starts.

Chairman Aitchison: Proceed, Mr. Bee.

Cross-examination.

By Mr. Bee:

Q. Mr. Stanage, in making rates from the Southwest [fol. 1012] to Official territory, do your lines control the making of those rates?

A. *Not the complete making of them. We initiate* the proposal and after it has been approved in the Southwestern Freight Bureau, it is submitted to the Eastern lines for their review and consideration and approval if they care to approve it.

Q. Is it not wholly a matter with them as to whether or not they will approve it?

A. They have the final say on it, yes, sir.

Q. Have all of the through rates from Southwestern to Official been put into effect that you show on page 32 of your statement, as to strawberries, grapes, peaches, canned goods, furniture, window glass, glassware and vinegar?

A. Would you mind repeating the question, please?

Chairman Aitchison: Read the question.

(Question read.)

A. Your page number is wrong, Mr. Bee. Strawberries are on 79. Paper 79. Grapes 80.

Mr. Bee: I am referring to page 32 of your statement.

A. Oh. What is the question now?

Mr. Bee: The question is this:

By Mr. Bee:

Q. Do you have through rates from the producing points in the Southwest on these commodities throughout Official territory?

[fol. 1013] A. If you will refer to page 32 of my testimony —is that what you have reference to, now, Mr. Bee?

Q. Yes. I am referring to page 32 of your testimony.

A. I have not checked the tariffs and I cannot tell you definitely, but I can answer this as a fact, that the rates on the commodities referred to have been established to Official territory to the extent sought or asked for or re-

quested by the shippers of these commodities in the Southwest.

Q. In every instance?

A. Yes, in every instance.

Q. Yes.

A. I do not know of any requests that they made that were not worked out to their satisfaction.

Q. I am asked by one of my interests to ask you to please look at page 5 of Exhibit 62 and advise how you arrive at the rate of $2.95 shown in column 4 as applicable from St. Louis to El Paso.

A. (No answer.)

Q. Do you find that?

A. From St. Louis to El Paso?

Q. Yes.

A. What page is that again?

Q. Exhibit 62, page 5, the third citation from the bottom.

A. I do not have the tariff before me. I can recheck that [fol. 1014] between now and the next meeting and if it is in error, correct it.

Q. I am advised that in 205 I. C. C. page 731, the Commission prescribed $3.25 without the increases, and we are wondering how you secured the $2.95 rate, Mr. Stanage.

A. I will check that.

Q. Will you please check that at your leisure?

A. Yes, I will be glad to check it and report when I am ready for cross examination.

Mr. Bee: You may check other comparisons in the same line. That is all.

Chairman Aitchison: Mr. A. L. Reed.

Mr. A. L. Reed: Mr. Stanage, I have a few questions with respect to your testimony and your exhibits. I would like to say first that the questions I am asking are on behalf of the Southwestern common carrier motor freight lines.

By Mr. A. L. Reed:

Q. In your prepared statement you refer to the fact at page 27 that but for the motor carriers or water carriers, the principal traffic would be handled by rail.

A. Yes.

Q. Did you mean to say by that statement that the truck lines had not themselves developed some traffic?

A. No. I think they have developed some.

Q. On page 61 of Exhibit 63 have you included such trucks [fol. 1015] as farm vehicle or trucks of that character?

A. Yes, sir. That is my understanding. Of course, we took these figures from the Automobile Manufacturers' Year Books, but it is my understanding that the figures shown are registrations of motor trucks without regard to ownership or use.

Q. With reference to pages 16 to 19, inclusive, of Exhibit No. 63, do you know whether or not in connection with the less than carload rates shown there that in some instances those rates were initially negotiated and published by the rail carriers?

A. That is possible. I did not check the records to determine definitely that all of them were based on prior action by the trucks. It is possible that we might have initiated some of those rates because of assumed competition from trucks which might not have been the fact.

Q. At page 78 of Exhibit 63 I believe the railroads initiated the all-freight items into the Southwestern territory?

A. Yes.

Q. Is that correct?

A. Yes. That is correct.

Q. Have you made any estimate of the amount of less than carload tonnage that has been diverted to your carload traffic through the so-called medium of mixing rules and stopover privileges and all-freight items?

[fol. 1016] A. No, sir, other than to the extent I have indicated as to the all-freight tonnage for the year indicated. I made no other computations.

Q. In your written statement you gave the figure of $10,111,000 as pickup and delivery cost. I would like to ask you if that figure includes allowances made to shippers, and does it include the cost incurred by the rail carriers where they have performed their own pickup and delivery service?

A. I am fairly certain—I do not know definitely, but I am fairly certain that the allowances are included, but I do not know as to the latter feature. These data were taken from the Commission's annual reports on statistics of railways, and I cannot answer accurately as to whether or not it included the expense to the railroads where they performed the pickup and delivery service.

Q. Would you mind by the next hearing checking the items to see whether or not you included the allowance to shippers which you customarily deduct from gross in the item of $10,111,000?

A. Not at all.

Q. Would you mind doing that?

A. No. I would be glad to do that.

By Mr. Barron:

Q. Those figures are taken right from the Commission's statistics, are they not, Mr. Stanage?

[fol. 1017] A. Yes, but the report does not indicate—I am satisfied that it includes the allowance, but I do not think it indicates any cost or approximate cost for the railroads where they do in some instances perform the service themselves. Of course, those instances are rare, but I will be glad to go into the matter and ascertain the fact.

By Mr. A. L. Reed:

Q. Will you be prepared to give a breakdown of that data if it is in there?

A. If I can get it, yes.

Mr. A. L. Reed: Thank you.

Chairman Aitchison: Is there any further cross-examination?

Mr. Dougherty: I have a few questions, Mr. Chairman.

Chairman Aitchison: Mr. Dougherty.

By Mr. Dougherty:

Q. You represent the Frisco, do you not, Mr. Stanage?

A. I am employed by the trustees, but I am here testifying for the Western carriers.

Q. Are you familiar with the actions of the Frisco representative on the Southern Committee?

A. Just with that statement of the matter, I do not believe I am familiar with it.

Q. The testimony here indicates that the Official lines are the ones who turned down the applications of the Southern and Southwestern lines to get into Central and Official territory. Do you know whether or not the South-[fol. 1018] western lines and the Southern lines turned down the applications by Official territory shippers in their

attempts to get into the South and Southwest and Western Trunk Line territory on a parity with the rates within those territories?

A. I do not recall the adjustment from the description you have given me of it.

Q. Well, take the paper adjustment for instance.

A. Dealing with the paper adjustment, the rates as I understand it, apparently in effect, were the result of the Minnesota-Ontario paper decision.

Q. No; from Official territory, I meant.

A. I meant from the North.

Q. I am speaking about Official territory.

A. Well, I do not know. I cannot answer you that.

Mr. Dougherty: That is all.

Chairman Aitchison: Is there any further cross-examination?

Mr. Smelker: I have one question.

Chairman Aitchison: Mr. Smelker.

By Mr. Smelker:

Q. Mr. Stanage, I believe you said in connection with your comments on Question 8, that there are instances where certain shippers get two cars for one, where a larger car is ordered; that is not true since Service Order 68 went into effect, is it?

A. No, but it was true at the time these statistics were [fol. 1019] made up.

Mr. Smelker: That is all.

By Mr. Barron:

Q. Mr. Stanage, when you spoke about the all-commodity rates to the South, you said they were initiated by the rail carriers.

Commissioner Alldredge: The Southwest.

By Mr. Barron:

Q. That was true, was it not?

A. Yes.

Q. Is it also true that the rates were initiated to meet truck competition?

A. Yes. That was one of the reasons.

Mr. Barron: That is all, thank you.
Commissioner Alldredge: Tell me how that could be.

By Commissioner Alldredge:

Q. If you initiated the all-commodity rates, it means that the trucks did not have them in effect. Is that not what that means?

A. No, sir.—It means this: Take merchandise moving out of a point like Jackson, Michigan, going to Stroud, Oklahoma, a point on the Frisco about 500 miles southwest of St. Louis. That traffic would be moving all-truck from Jackson, Michigan. Now, the freight forwarders found it desirable to establish service based on having the shipment taken from Jackson, Michigan, to Chicago and there consolidating the car and shipping it direct to a point like Tulsa, which is about 75 miles this side of Stroud, with [fol. 1020] movement from Tulsa to Stroud by motor carrier, because of the flexibility of the service. The railroads established the forwarder rate in order to attract that type of merchandise from the trucks, moving by truck all the way from origin to destination.

Q. Under all-commodity rates?

A. Under all-commodity rates from Chicago to Tulsa. The shipper, however, paid to the freight forwarder the freight forwarder's rate from Jackson, Michigan, to Stroud, Oklahoma, and out of the rate the forwarder secured from the shipper, the consignee or whoever paid the freight forwarder, would pay the cost for getting the shipment from Jackson, Michigan, to Chicago, the all-freight rate from Chicago to Tulsa and the cost of delivery from Tulsa to Stroud. They would have anything that was left, a profit or no profit.

Q. Why do you think it is necessary for the Western carriers to maintain Rule 10 in the Classification as it has been revised, and all-commodity rates too?

A. Because the present Rule 10 was not—I will use the word "sufficiently"—sufficiently low and sufficiently attractive to enable the party who used it like I indicated the forwarders do, to take advantage of it in competition with the trucks hauling traffic from the point of origin to the ultimate destination direct.

Q. Are those all-commodity rates then primarily for the [fol. 1021] use of, or for application to forwarder traffic?

A. No, sir.

Q. Is that it?

A. I would not say that is correct, no. They are used primarily by the forwarders, but as I pointed out here, we find an increasing use by other shippers; for example, chain stores, some of the mail order houses and some other shippers and receivers who find it desirable to use such service and such rates.

Q. May I ask you one further question about it: If the all-commodity rates on the mixtures were not lower than the average of the class rates to which Rule 10 applies, what would be the necessity of operating both Rule 10 and the all-commodity rates?

A. May I have that question again?

Chairman Aitchison: Read the question.

(Question read.)

A. I cannot answer that without further study.

By Commissioner Alldredge:

Q. Well, if the all-commodity rate reflected the average of the class rates to which Rule 10 applies, then in the aggregate the shipper that is using the all-commodity rate would get just as low a charge under Rule 10 as he would under the all-commodity rate, is that not right, on the average?

A. If we base it on that premise, yes; the answer is [fol. 1022] "yes". However, you must bear in mind that the shipper using the all freight rate or the forwarder's service is a different type of shipper than the man using the Rule 10 car. That has been our experience. In other words, the forwarder handles less than carload freight which he secures in a certain origin territory and assembles at a given key point, ships in carloads and distributes from a destination key point to the consignees to whom the goods are consigned; whereas the Rule 10 mixture, according to my experience, is used by manufacturers, for example, of furniture who combine their shipments together in one car, and possibly because of an order including some other articles not akin to furniture, they will include some, what I might term "contraband," other than furniture—I am just using the word "contraband" to mean everything other than furniture—because of the desire of their customers for this accommodation in shipping

a small quantity of a commodity other than furniture, and they are willing to pay under the Rule 10 basis.

Q. When you operate on a dual basis—this is a dual basis for mixtures, is it not?

A. Yes.

Q. —do you not put it in the hands of the shippers to play one against the other and pick and choose and mix and remix so as to vary the aggregate rates they pay?

A. Yes. I cannot tell you how it is going to work out.

Q. That is worse than Rule 10, is it not?

[fol. 1023] A. No, sir. I think both types of rates are essential to the rail carriers if they are to meet the competition of other transportation agencies. You see, the railroads today have no monopoly in the handling of traffic. They have a way to meet the competition of other transportation agencies in the instance cited, in the handling of merchandise traffic.

Commissioner Alldredge: All right.

Chairman Aitchison: Are there any other questions?

Mr. Barron: One more question.

By Mr. Barron:

Q. Mr. Stanage, do you know whether or not the United States Quartermaster and other Government departments use the all-commodity rates?

A. They are beginning to use them, yes, sir.

Q. As a traffic man, would you say it would be possible, from day to day, to determine what would be the average rate on a Rule 10 car to be used from one day to another?

A. It would be impossible to do it.

Mr. Barron: That is all.

By Commissioner Alldredge:

Q. Have you ever tried to find out?

A. No, sir.

Q. All right.

The difficulty is this: The shipper of a commodity—I will put it this way: My experience has been that the mix-[fol. 1024] tures are handled by one manufacturer who is trying to accommodate his consignee by including other articles than the one he generally manufactures in the car, and shipping as a mixed car; whereas the freight forwarder has an established business which the Commission

has now come to recognize and which the Interstate Commerce Act has been amended to cover and he has a type of service which the shipping public wants.

Q. Well, can't he use Rule 10?

A. No, because—I will illustrate it again by my shipment from Jackson, Michigan, to Stroud, Oklahoma. We will assume it is a box of goods weighing 300 pounds. The shipper has no way to consolidate that in a Rule 10 car because he does not know anybody shipping from Jackson, Michigan, to Stroud or near that point.

Q. Well, would you not say——

A. Pardon me. May I finish?

Q. Yes.

A. The shipper then contacts the forwarder and says, "What is your rate?" He finds out the rate. He finds he can use the rate. Then he turns the shipment over to the forwarder at Jackson, Michigan, and finally it is delivered to the consignee at Stroud and he does not have to worry about it. He is a different type of shipper than the one using the mixed carload rating. He is a manufacturer and he is trying to accommodate his customers by letting [fol. 1025] go along with his shipment some traffic other than the kind he manufactures, or possibly kindred articles, or in instances where he manufactures a line of articles. It is a manufacturer's distributing plan rather than an individual shipper's plan.

By Mr. Barron:

Q. Well, there is nothing in Rule 10 in and of itself to prevent the forwarder from using it if he could accommodate himself to the rule, is there?

A. There is nothing prohibiting him from using it.

By Commissioner Alldredge:

Q. Every time a forwarder loads a car with miscellaneous freight, he has got to determine a rate from the point where he loaded it to the point where it is going, does he not?

A. Yes. He knows that beforehand.

Q. Now, he could get a rate with Rule 10 just as easily as he could with an all-commodity rate, could he not?

A. No, sir, not and meet the competition of the motor carriers, because on this shipment that I speak of from

Jackson, Michigan, he does not know how many other shipments he is going to receive on the same day, to assemble at Chicago to ship to Oklahoma.

Q. It is a question then of how high the aggregate charge is under Rule 10 as compared to the all-commodity rate, is it not?

A. That is only one factor. There are two different types of traffic and they accommodate two different sets [fol. 1026] of shippers.

By Chairman Aitchison:

Q. How is it working out under the Office of Defense Transportation full car order?

A. No complaints have been brought to my attention.

Q. I mean, how does it actually work? If it is so difficult for a small shipper to find someone else to be able to give him the remainder of a carload so he can take advantage of Rule 10, how is he going to comply with the O. D. T. order?

A. In actual practice, Mr. Chairman, the shipper with a small consignment like I have mentioned, does not fool with Rule 10. He just ships as a less than carload consignment either by motor truck or by rail. However, if he is advised of the fact that he can have better service and possibly a little cheaper rate by combining his freight with other freight that the forwarder has accumulated, he wil take advantage of their offer of a rate.

Q. Under this full car order, how do they go about to get a full car?

A. O. D. T. Order No. 18 has not been in effect yet; that is, it is not in effect now. It is going into effect on the 15th.

Q. The 15th of October?

A. Yes. I cannot tell you how it is going to work out.

Q. That is worse than Rule 10, is it not?

[fol. 1027] A. Well, only experience can tell.

Q. I mean, as far as the ability of the small shipper to combine, to hear the call of his mate in the distance?

A. I cannot prophesy how it is going to work out.

Mr. Barron: He will have to find some friends to ship with him, no doubt.

Chairman Aitchison: Are there any other questions of Mr. Stanage? (No response.) You may stand aside.

(Witness excused.)

Chairman Aitchison: Mr. Gault.

Mr. Gault: Call Mr. E. A. Tharp.

Chairman Aitchison: Is this witness going on for the Western Trunk Lines?

Mr. Gault: He is going on for all the Western lines, but particularly he is going on for the Western Trunk Lines.

Chairman Aitchison: We have heard from the East and South. How about the Pocahontas Lines? Is anybody appearing for them? (No response.) Are they going to put in any testimony?

Mr. Healy. The testimony of the other witnesses for the Eastern lines embraced the Pocahontas lines.

Mr. Norman: What was that?

Mr. Healy: The testimony of the other witnesses for the Eastern lines embraces the Pocahontas lines.

Mr. Norman: I would like to have that clarified. I do [fol. 1028] not know what he means by "embraced."

Mr. Healy: It was presented on their behalf as well as all other lines in Official territory.

Chairman Aitchison: Mr. Healy, would you mind repeating that statement for the record?

Mr. Healy: The testimony of Mr. Hawkes and the other witnesses for Official territory lines was given on behalf of the Pocahontas lines as well as all other lines in Official Classification territory.

Mr. Gault: Be sworn, please, Mr. Tharp.

Chairman Aitchison: Raise your right hand.

E. A. Tharp was sworn and testified as follows:

Direct examination.

By Mr. Gault:

Q. Please state your name, address and occupation for the record, Mr. Tharp.

A. My name is E. A. Tharp. I am Assistant Freight Traffic Manager for the Chicago, Rock Island & Pacific Railway, with headquarters in Chicago.

Q. How long have you been employed by that company?

A. I have been employed by the Rock Island for 17 years.

Q. You have prepared a statement and also an exhibit to introduce of record?

A. Yes, sir.

Mr. Gault: That exhibit, according to my count, will [fol. 1029] be No. 64.

Chairman Aitchison: It may be marked for identification as Exhibit No. 64.

(Exhibit No. 64, Witness Tharp, marked for identification.)

Mr. McCollester: Will you describe that exhibit, please?

Mr. Gault: First for the record I want to say that while I regret it, there is no index to this exhibit. We did not have time to prepare and have one printed, but we will furnish one at the adjourned hearing.

Chairman Aitchison: Very well. Proceed.

By Mr. Gault:

Q. Please proceed with your statement, Mr. Tharp.

A. I have been called as a witness in this proceeding in behalf of the railroads in Western territory. The Commission's Order of July 29, 1939, instituting this investigation represents a continuation of an almost constant procession of class rate cases that have passed in review beginning shortly after the Interstate Commerce Commission was created in 1887.

One of the earliest class rate cases reported covering rates in what is known as Western Trunk Line territory involved a complaint that was filed in September, 1887. It is reported in Volume One of the Interstate Commerce [fol. 1030] Reports on page 630. Only a cursory check of the Commission's reports indicates that since that time there have been released something over 200 reports that involved class rates either to, from, or within Western Trunk Line territory. Those reports embrace approximately 2500 pages of printed matter.

The following cases are perhaps the most important ones so far as the class rates to, from or between points in Western Trunk Line territory are concerned: Burnham, Hanna, Munger Dry Goods Company, et al., vs. CRI & P Ry. Co., et al., 14 ICC 299, decided June 24, 1908. George J. Kindel vs. N. Y. N. H. & H. RR Co., et al., 15 ICC 555, decided March 2, 1909. Warnock Company vs. C. & N. W. Ry. Co., 21 ICC 546, decided November 6, 1911. Class Rates to Watertown, S. D., 26 ICC 635, decided April 7, 1913. State of Kansas Case, 27 ICC 673, decided June 18, 1913. Interior Iowa Cities Case, 28 ICC 64, decided June 17, 1913.

Iowa State Board of RR Commissioners vs. A. E. RR Co., 28 ICC 193, decided June 18, 1913. Colorado Manufacturers Ass'n, vs. A..T. & S. F. Ry. Co., 28 ICC 82, decided June 18, 1913. Interior Iowa Cities Case, 29 ICC 536, decided January 13, 1914. Minneapolis Civic & Commerce Association, 30 ICC 663, decided June 27, 1914. Missouri River-Nebraska Cases, 40 ICC 201, decided July 3, 1916. The Wisconsin Rate Cases, 44 ICC 602, decided April 25, 1917. Commercial Club of Mitchell, S. D., 46 ICC 1, decided July 5, 1917. Interior Iowa Cases, 46 ICC 39, [fol. 1031] decided July 7, 1917. Traffic Bureau of Aberdeen, Com. Club, 56 ICC 147, decided December 11, 1919. Green Bay Ass'n. of Commerce vs. C. & N. W. Ry. Co., 56 ICC 326, decided July 13, 1920. Grand Island Chamber of Commerce vs. A. & R. RR. Co., 85 ICC 502, decided December 18, 1923. Indiana Public Service Commission vs. A. T. & S. F. Ry. Co., 88 ICC 709, decided April 8, 1924. Fargo Commercial Club vs. A. & W. Ry. Co., 98 ICC 691, decided June 2, 1925. Class rates between Missouri and Interstate Points, 100 ICC 274, decided July 14, 1925. Watertown Chamber of Commerce vs. A. & W. Ry. Co., 101 ICC 427, decided July 14, 1925. Watertown Chamber of Commerce vs. C. & N. W. Ry., 101 ICC 441, decided July 14, 1925. Western Trunk Line Class Rates, 164 ICC 1, decided May 6, 1930. Interstate Rates between points in Missouri, 181 ICC 259, decided January 5, 1932. Western Trunk Line Class Rates, 204 ICC 595, decided October 9, 1934. Western-Southern Class Rates, 226 ICC 497, decided April 5, 1938. Western-Southern Class Rates Report on Reconsideration, 231 ICC 315, decided January 9, 1939.

Examination of these cases, as they affected the interterritorial Class rates, demonstrates that in the earlier proceedings as well as in the exhaustive Western Trunk Line Class Rate investigation vigorous efforts were made on behalf of private interests and consumers, also by State Commissions representing the public at large, to obtain [fol. 1032] reduced rates from the East on a long list of manufactured articles consumed in the West.

The present class rate adjustment, generally, within Western Trunk Line territory, between Western Trunk Line territory on the one hand, and Official territory on the other resulted from the Commission's investigation and decisions in Rate Structure Investigation, Part 2—Western

Trunk Line Class Rates, the first report in which is carried in Volume 164 beginning at Page 1. That investigation was instituted by the Commission on October 11, 1926. The hearings were started in January, 1927, and concluded in May, 1928. The Commission's report and order is dated May 6, 1930. The rates prescribed therein became effective on December 3, 1931. The proceedings were reopened for further hearing by the Commission's order of October 28, 1932.

The further hearing began in December, 1932, and was concluded in April, 1933. The decision is dated October 9, 1934. The revisions in the rates prescribed as a result of the further hearings became effective on August 20, 1935. The original and subsequent series of hearings in that proceeding consumed 18,300 pages of transcript and there were submitted about 1700 exhibits. In complying with the Commission's decision in that proceeding a force of 100 to 200 men worked over two years to compute the necessary [fol. 1033] mileages and determine the rates. That work cost the Western Trunk Line railroads in excess of $400,000 in wages alone.

Between points in Western Trunk Line territory, on the one hand and Southern territory on the other, the present Class rate adjustment was prescribed by this Commission as late as April, 1938, in the Western-Southern Class Rates Case, Docket No. 26510 reported in Volume 226 at page 497. These latter rates became effective June 7, 1939.

By Chairman Aitchison:

Q. I wonder why you do not say anything about the prior case, Ex Parte 87, I think it was, revenues in the Western District?

A. That is an important case, of course, Mr. Chairman. The cases I have listed are intended to set forth the history of the Western Trunk Line Class Rate adjustment which, of course, would be covered by the Western Trunk Line Class Rates decision, coming on after Ex Parte 87.

Q. Well, the significance of Ex Parte 87 is that the carriers undertook to get prior rates increased on account of alleged revenue needs and were held not to have made out a case.

A. I appreciate that.

By Mr. Gault:

Q. Continue, please.

A. In the first decision in the Western Trunk Line Class Rates Case, 164 ICC 1, the Commission has set forth on [fol. 1034] pages 23 to 36, inclusive, a broad outline of the historical background of the class rate adjustment obtaining within Western Trunk Line territory prior to December 3, 1931. On pages 36 to 40, inclusive, a similar outline is shown with respect to the class rates between Western Trunk Line territory on the one hand, and Official territory on the other. It is, of course, well known that the class rates, generally, between these latter two territories prior to December 3, 1931, were made on combination of the Eastern and Western factors based on the Mississippi River or other junctions of Eastern and Western lines. One notable exception of long standing *is* the combination basis was the joint one factor class rates that were in effect between Official territory and the Twin Cities and Duluth, also intermediate points in Eastern Minnesota and Wisconsin, and from Trunk Line and New England territories to the Twin Cities and Duluth.

On pages 42 and 43 of the report last mentioned is shown a brief history of the class rates between Western Trunk Line territory on the one hand, and Southern territory on the other, which rates generally were, prior to January 15, 1928, made on combinations over the Mississippi or Ohio Rivers. When on January 15, 1928, the rates resulting from the Commisssion's decision in the Southern Class Rates Case became effective the rates generally continued on the combination basis but many changes in the basing [fol. 1035] points resulted which situation continued until the overhead rates became effective on June 7, 1939, as a result of the Western-Southern Class Rates decision.

I will not go into detail as to the histories of these class rates in view of their being set forth in the reports of the Commission, but I have had prepared statements that will show representative examples of the first and fifth class rates between points in Western Trunk Line territory; between points in Western Trunk Line territory on the one hand, and Official territory on the other; also between Southern territory on the one hand, and Western Trunk Line territory on the other.

Q. You are referring now to the document which has just been given Exhibit No. 64?

A. Yes.

Q. It consists of 109 pages and a cover?

A. Yes.

Q. Proceed.

A. Pages Nos. 1 to 20 of Exhibit No. 64 show representative examples of the first and fifth class rates between points within Western Trunk Line territory in effect on December 2, 1931, just prior to the effective date of the rates resulting from the first decision in the Western Trunk Line Class Rate case, contrasted with the first and fifth class rates that became effective on December 3, 1931, the [fol. 1036] effective date of the Commission's order in the proceedings mentioned. There is also shown first and fifth class rates designated as "present rates," which rates resulted from the Commission's Sixth Supplemental report, or the report on further hearing in the Western Trunk Line Class rate case, and became effective August 20, 1935. These latter rates do not carry the increase authorized in Ex Parte 123 or Ex Parte 148.

Pages Nos. 21 to 62 show representative examples of the first and fifth class rates between points in Western Trunk Line territory on the one hand, and points in Official Classification territory on the other in effect as of December 2, 1931, December 3, 1931, and present rates which became effective August 20, 1935. These rates, too, are without the Ex Parte 123 or 148 increases.

Pages Nos. 63 to 71 show representative examples of the first and fifth class rates between points in Western Trunk Line territory on the one hand, and Southern Freight Association territory on the other. It shows rates that were in effect on June 6, 1939, the date just prior to the date on which the rates resulting from the Commission's decision in the Western-Southern Class Rates case became effective. The rates shown as "present rates" became effective on June 7, 1939, and are the rates resulting from the decision in the latter proceeding mentioned and do not [fol. 1037] include the Ex Parte increases.

The basic rate structure applying to, from and between points in Western Trunk Line territory had been thoroughly litigated before the Interstate Commerce Commission during the past twenty years. The carriers have con-

stantly had the rates before them, as they apply to individual commodities, in an effort to meet changing conditions and the needs of commerce.

The Western Trunk Line railroads are convinced that only radical changes in basic conditions could alter the considerations upon which the Commission has heretofore acted, or could warrant any change in the basic class rate structure, or any narrowing of the present spreads in the class rate structure to, from or within Western Trunk Line territory. As has been brought out by previous witnesses, conditions at this time are so extraordinary, unstable and unpredictable because of the war it is apparent, the Western Trunk Line Railroads believe, that the territorial spreads in rates should not at this time be altered. These railroads even suggest that after the conclusion of the war it may be found that the territorial spreads should be broader instead of narrower if the Western railroads are to survive and render efficient service to the public.

It is recognized that changes in conditions have taken place after the Western Trunk Line Class rate adjustment [fol. 1038] became effective in August, 1935, but the railroads as well as the Commission already have had occasion thoroughly to consider and deal with such changed conditions in the Ex Parte 123 proceeding decided March 8, 1938, and reported in 226 ICC 41 and in the Ex Parte 148 proceeding decided March 2, 1942, and reported in 248 ICC 545.

The railroads realize that there is a disposition on the part of some to criticize the existing class rate structure as overly complicated. These railroads, however, believe that such criticisms are exaggerated and overlook the complexities inherent in the fixation of rates moving different descriptions of traffic to, from and within territories having different rate making elements. They insist, moreover, that if the railroads are to be in a position to continue to provide service to the public there must be no diminution whatever in revenue from class rate traffic as the result of any attempt to achieve supposed simplicity in tariff construction and application. The railroads must live on the traffic available in the territory they serve. If our critics prevail and reduced class rates result it follows that any loss of revenue from class rate traffic must be offset by increases in the rates on other traffic, such as agricultural

products, building materials, farm machinery, and other articles used to sustain the activities of an agricultural region.

[fol. 1039] One aspect of the present class rate structure applicable between Official and Western Trunk Line territory could be simplified both from the standpoint of the rate structure itself as well as from a tariff standpoint. I have reference here to the so-called bridge scale of rates first prescribed by the Commission and set forth in Appendix K of its first report in the Western Trunk Lines Class Rates Case, and modified in its 6th Supplemental Report. That bridge scale was devised for the purpose of fusing the Eastern Class rate structure with the Western Trunk Line structure and its application has resulted in confusing the tariff situation, as well as in the railroads receiving for their services less than the circumstances of transportation warrant.

The present bridge scale formula requires the addition of named arbitraries to the class or commodity rates applicable in the territory east of WTL Zone 1 in the construction of rates between the bridge scale zone of WTL territory on the one hand, and Eastern territory on the other, the resulting rates to apply where lower than the specifically published overhead rates or combination of local rates, but subject to certain minimum rates. The tariffs could be simplified if the bridge scale arbitraries were required to be used only in connection with the class rates, which would permit of making a specific publication [fol. 1040] of such rates as were determined by use of the bridge scales. That method was followed in the first decision in the Class rate case.

One of the principal issues in this proceeding relates to the present difference between the class rate levels within and between the different rate territories, and whether one rate level or fewer and more closely related rate levels than now exist are desirable. These are not new questions. They were important issues in the Western Trunk Line Class Rate Investigation and the Commission devoted much space in its reports to reviewing the evidence and stating its findings and conclusions on the subject.

As an indication of the differences in the class rate scales there is shown on page 72 of Exhibit 64 a com-

parison of the Eastern first class scale with the basic first class scale prescribed in the first Western Trunk Line Class Rate decision, and the basic first class scale prescribed in the second decision.

On page 73 is shown all of the scales prescribed in the Eastern class rates case on the standard class ratings for application in Central and Trunk Line territory. At this point I want to point out that in New England territory the Commission prescribed scales of class rates which I understand to be about 5 per cent higher in Zone A and about 10 per cent higher in Zone B than the rates prescribed for Central and Trunk Line territory, also for [fol. 1041] Zone C in Michigan a differential scale was prescribed which resulted in rates about 10 per cent higher. I also invite attention to the fact that between the various zones in Eastern territory a formula was prescribed for determining the rates similar to that prescribed in the Western Trunk Line Case. A mere examination of the basic class rate scale in Official territories does not alone indicate the full measure of the level of rates applicable within that territory. On pages 74 and 75 is shown the Western Trunk Line Zone 1 scales prescribed in the first report and on pages 76 and 77 is shown the Zone 1 scales prescribed in the report on further hearing. On pages 78 and 79 is shown the first Zone II scale and on pages 80 and 81 is shown the Zone II scale resulting from the further hearing. On pages 82 and 83 is shown the first Zone III scale and on pages 84 and 85 is shown the Zone III scale on further hearing. On pages 86 and 87 is shown the Southern Class rates scales.

On pages 88 to 91 there have been shown representative examples of the first class rates from points in Eastern territory to points in Western Trunk Line territory to indicate their relationship with constructive first class rates based on the Eastern first class scale. On pages 92 and 93 there have been shown representative examples of the first class rates from points in Southern territory to points in Western Trunk Line territory to indicate how [fol. 1042] those rates are related to constructive first class rates based on the Eastern scale as well as the Southern first class scale.

Pages 1 to 71 of Exhibit No. 64 demonstrate the effect on the class rate structure to, from and within Western

Trunk Line territory of the Western Class rates decisions, which brought about a decided narrowing of the spreads in the rates theretofore in effect. The bridge scale of arbitraries mentioned before was another phase of those decisions that further narrowed the spreads in rates in the border area. The original bridge scale was designed for that purpose and when that scale was reduced and its territorial application extended in the Commission's Supplemental report, 173 ICC 637, a further narrowing of the spreads was effected.

Page 94 of Exhibit 64 shows the original bridge scale, and the modified scale prescribed in 173 ICC 637 which is also the scale represcribed in 204 ICC 595. This page shows the substantial reduction made in the original bridge scale also the extent to which its application was extended into Western Trunk Line territory. Pages 95 to 100 of Exhibit 64 show representative examples of the first class key point rates prescribed in the Western Trunk Line class rates case to apply between points in Eastern territory and bridge-scale territory in Zone 1.

Page 101 of Exhibit 64 is a statement showing repre- [fol. 1043] sentative examples of specific first class key point rates prescribed by the Commission in its Sixth Supplemental report in the Western Class Rates case compared with first class rates that would have resulted from a strict application of the distance scales and formula there prescribed. After having prescribed distance scales and formula for determining rates on interterritorial traffic which if applied would have made substantial reductions in those rates the Commission made further substantial reductions by prescribing still lower specific key point rates.

Another question raised by the Commission is the method or methods to be used in the construction of interterritorial class rates, if more than one rate level is prescribed. The present Western Trunk Line Class rate structure in its original design was complicated because of the number of distance scales and differential scales prescribed and the formula used in connection therewith for determining the rates. To comply with the requirements of the Commission's decisions millions of computations of mileages and rates were necessary to put the rate structure together. If the Commission

should now require a new basic class rate structure a similar procedure for determining the specific rates would be necessary. With the exacting task of complying with the Western Trunk Line decisions already accomplished and the rates published in reasonably simple tariffs the [fol. 1044] Western Trunk Line railroads are convinced that no change in the basic class rate structure is warranted. Interterritorial class rate structures must reflect the different rate making elements in the different territories through which such rates are to apply.

Chairman Aitchison: I do not quite understand what you mean there by "the different ratemaking elements."

The Witness: Well, the different ratemaking elements, as I understand ratemaking elements, must take into account density of traffic, density of population, physical transportation conditions of the different territories; that is what I have in mind when I speak of transportation elements.

Chairman Aitchison: Proceed.

The Witness: The progressions in the present class rate scales applicable in the various rate territories is another question presented. Page 102 of Exhibit 64 shows the progression of the Eastern first class scale, the first WTL Scale, and the second WTL Scale.

The progression in the class rate scales was also an important issue in both the Eastern and Western Class Rate cases. Following the first decision in the Western Trunk Line Class rates case the carriers expressed dissatisfaction with the progression in those scales and the effect such progression would have upon their rates and revenues.

The Western Trunk Line railroads in the further hear- [fol. 1045] ing in the case opposed tapering rates per 100 miles with the increase in distance as wholly theoretical and urged that no rate making element is found in a haul at 700 miles to justify a sudden decline in the rate of progression. The Western carriers have never accepted and do not now accept the theory adopted by the Commission, but in the light of present conditions and uncertainties of the future do not challenge it here. That system of making rates is, of course, decidedly in the interest of the long haul shipper.

The Eastern first class scale reflects a diminishing rate of progression with increased distance. Notwithstanding

that, the Commission prescribed a rate from Boston, Massachusetts, to Quincy, Illinois, for example of $1.79 or 9 cents below the scale for 1212 miles, the distance between the two cities. Many such illustrations could be given. That system of making rates had the effect of bringing the Eastern rates right up to the border of Western Trunk Line territory at their relatively lowest levels thus creating disparities at the border points in Western Trunk Line territory. The Western carriers urged that its correction should be brought about by readjusting the Eastern scale and rates as it approaches the border rather than reduce the rates to and from the border area in Western Trunk Line territory. A part of that difficulty was, how-
[fol. 1046] ever, solved at the expense of the Western rates by leveling downward the rates to and from Western territory without disturbing the Eastern class rate adjustment.

This situation is called to the Commision's attention to support the position of the Western carriers that the class rates designed for Eastern territory should not be made the base either for a uniform level of class rates or for the narrowing of spreads to, from or within the Western territory.

Another question raised by the Commission is whether the progressions in the class rate scales should be the same for less carload traffic as for carload traffic. This is not a new question. In the Western Trunk Line class rates case, particularly in the first series of hearings, several interests urged such a system of rates and submitted a large amount of exhibits and testimony in support of their position, while other parties opposed it with equal emphasis. After a review and consideration by the Commission of that extensive evidence one system of class rates was prescribed for both less carload and carload traffic. The Western Trunk Line carriers have found nothing to add to their evidence in the former cases on that point and have not developed any subsequent change in conditions that would affect or modify the evidence which has already been considered, or justify any change in the findings of the Commission. Where unusual con-
[fol. 1047] ditions arise because of competition from other forms of transportation those particular situations can be dealt with by the railroads by appropriate exceptions to the standard class rate scales.

By Commissioner Alldredge:

Q. Do you know of any place in Western Trunk Line territory that you do not have competition from some other type of carriers?

A. Where we do not have competition?

Q. Yes.

A. I think almost any point you want to reach in Western Trunk Line territory would be affected by truck competition in some form; not between all points, of course.

Q. Instead of being a matter of competition for other agencies of transportation, particularly the motor carriers, it is not a matter to be encountered in special situations, but it is generally encountered everywhere, is it not?

A. I think that is true, that all of the railroads in all of the territories have their share of competition from motor carriers.

Commissioner Alldredge: Go ahead.

The Witness: Involved here also is the question raised by the Commission of percentage relations between the rates on the various classes. That question, too, has had extensive consideration by the Commission in all of the major territories. In Western Classification territory there are [fol. 1048] only ten standard numbered and lettered classes (1 to 5 and A to E). In its first report in the Western Trunk Line Class rate case the Commission set 22 scales lower than first class ranging downward from 92.5 to 13 per cent of first class, and suggested that future needs for more classes should be anticipated. At the present time the tariffs of the Western Trunk Line carriers provide 86 columns of rates lower than first class ranging down to 9 per cent of first class.

Between points in Central territory on the one hand, and Western Trunk Line territory on the other where the Official classification governs the carriers have published 122 column of rates lower than first class and where the Western Classification governs the carriers have published 110 columns of rates lower than first class.

In the Western-Southern class rates case the Commission likewise required publication of 22 scales of rates lower than first class, but in making publication the carriers provided for 49 columns lower than first class south-bound and 46 columns northbound. Since the original publication 44 additional columns have been established southbound

making a total of 93 and 20 additional columns have been established northbound making a total of 66. One might ask why so many columns of rates lower than 1st class, or Column 100, have been established. There would be no [fol. 1049] purpose in setting up all those columns of rates, unless it were intended that they should be used. They have all been set up within the framework of the Commission's prescribed rate structure and represent first those columns specifically prescribed by the Commission on the ten standard classes and those to be applied on particular commodities; second, those columns established by the carriers to be applied on commodities on which efforts were being made to meet truck competition; third, those columns established by the carriers for application on various commodities for the purpose of working the percentage increases into the permanent rate structure, which in many cases required intermediate columns.

It was shown in the Western Trunk Line Class rates case that the class rate percentages varied in different parts of the same territory. The Western Trunk Line carriers in that case sought to have the Commission prescribe for fourth class 60 per cent of first class and on fifth class 40 per cent of first class, but the Commission prescribed 55 and 37½ per cent respectively of first class. In the Eastern case the Commission prescribed on fifth class 35 per cent of first class. In the Southern Class Rate Case the Commission prescribed on fifth class rates 45 per cent of first class. The Western lines have already made their con- [fol. 1050] tribution, so far as fifth class is concerned, in the interest of closer uniformity and feel that they should be relieved from further inroads upon their class rate structure and revenue merely for the purpose of a uniform relationship to first class with that of another territory where different traffic, transportation and economic characteristics prevail. The Commission has inquired—before I start on that, I would like to make this comment, that the first column rates as they existed were established as a result of the Commission's orders in the Consolidated Southwestern Cases and the Western Trunk Line Class Rates Case.

By Mr. Gault:

Q. Proceed.

A. The Commission has inquired as to the feasibility of prescribing minimum and maximum or precise class rates. Up to this time the Commission has not deemed it necessary to freeze the class rate structure in any of the major rate territories. If the inquiry were to be answered in the affirmative and the Commission should prescribe either maximum and minimum or precise class rates it would, as we view it, freeze the class rates. The Western Trunk Lines, aside from the question of feasibility do not consider such action as being desirable from the standpoint of the carriers or the shipping public. In the several class rates cases the Commission has prescribed maximum class rates and the carriers have not encountered any substantial [fol. 1051] difficulty in making such rates perform their function. We do not, therefore, object to the label of maximum being attached to such rates. It is, however, our view that the prescription of minimum or precise class rates would be neither desirable or feasible for the reason that such a rate adjustment would prevent the orderly establishment of rates necessary to serve the changing needs of commerce. And would also prevent the orderly establishment of rates to meet competitive conditions created by the different methods of transportation. If such minimum or precise rates were to be prescribed it would be necessary to secure modification of such orders in each and every case where some changing need of commerce or competitive condition required such action. It might be well to invite the Commission's attention to the experience with the minimum rate orders issued covering common carrier truck rates. There I have in mind the minimum rate orders in Ex Parte 123 and Ex Parte 21.

As a general thing the Western Trunk Lines consider such orders as not being feasible except to prevent the establishment of rates that might be a burden on interstate commerce. As a practical matter, except in instances of the kind indicated, the rate adjustment should remain flexible.

The Commission has inquired as to the extent to which the class rate traffic of railroads is affected by the com- [fol. 1052] petition encountered from motor carriers and water carriers. A precise and accurate answer to that ques-

tion cannot be given since, to my knowledge, there are no data available showing the proportion of the total traffic that moves on class rates, either by the railroads, motor carriers, or water carriers. So far as the railroads are concerned a detailed and costly study of individual waybills would be required to develop that information.

The subject is made more difficult of treatment by reason of the fact that what may be class rate traffic in one territory is commodity rate traffic in another territory. Even within Western Trunk Line teritory certain traffic may move on class rates in one part of the territory and on commodity rates in another part of the territory. That is even true to some extent within individual zones in Western Trunk Line territory. As an illustration of this latter statement, the Commission prescribed class or column rates on Iron and Steel in the Western Trunk Line class rates case, which were established. Later it became necessary to establish commodity rates on Iron and Steel to meet water competition from the Illinois steel producing points to the Twin Cities, which were held as maximum in the territory intermediate thereto, but to other parts of Western Trunk Line territory the class or column rates were continued. It is common knowledge too that both the motor carriers and water [fol. 1053] carriers have handled a very large volume of traffic. It would be a difficult, if not impossible, task to segregate that part of the rail, truck or water traffic to determine which part was subject to competitive influences or to what extent it is subject to such influences.

It is common knowledge that both truck competition and water competition have had a profound effect upon the general rate structure throughout the Western territory. In the past few years the Western Trunk Line railroads have found it necessary to make substantial reductions in their rates on a great many commodities in an effort to retain the business. In some cases the carriers were able to retain the business by such reductions, but in other cases even rate reductions did not arrest the downward trend in that traffic. There are no data available that would give even a rough estimate of the total volume of those rate reductions. However, pages 103 to 108 set forth some examples of the reductions in rates that have been made for that purpose.

The Commission stated in its report on further hearing on page 661 of Volume 204: "This record plainly indicates

that respondents will be compelled extensively to maintain rates between points up to 500 miles apart at levels considerably lower than those herein prescribed."

The Commission has likewise made inquiry as to the effect upon the movement of class rate traffic of traffic [fol. 1054] transported on basis of all-commodity rates, and of traffic handled by forwarder companies. We are here confronted with practically the same situation as that in connection with the motor and water carriers because of the lack of detailed information upon which to base an answer. The freight forwarders are now under the regulation of the Interstate Commerce Commission and whatever may have been the effect of that business upon the class rate traffic of the railroads in the past it is at least questionable whether the past records would throw any light upon the situation as it may develop in the future. Their business consists principally of consolidating less carload shipments into carload shipments, a very large part of which move on all-commodity rates. These latter rates are also utilized by the mail order companies and to some extent by the chain store companies, and others.

The Commission has also inquired as to the desirability of stating separately the charges or allowances for pickup and delivery. When the motor carriers came into the transportation field the rates they established contemplated the pickup of traffic at the shipper's door and delivery of that traffic at the store doors. That arrangement prevailed both on less truck load and truck load business. As the competition of the motor carriers developed it became evident to the railroads that so far as less carload traffic was [fol. 1055] concerned a comparable service would be necessary to enable them to stay in that business. It was then thought that it could be treated strictly as a matter of service and that the shipping public would be willing to pay for that service a charge in addition to the line haul rates. The service was established and a charge therefor was published. No allowance was made to a shipper or consignee where he elected to perform that service for himself. It soon became evident that with the trucks performing such service without charge in addition to the line haul rate, the railroads must do likewise as a competitive measure. Up to this time there has been no change in conditions to warrant a change in that practice.

Before closing, I should like to point out that the critics of the present class rate structure have advertised, quite extensively, what is alleged to be the fact that the level of the class rates within Western Trunk Line territory is 147 per cent of the level of the class rates in Eastern territory. Another witness will treat with that but in the meantime I desire to point out that the heaviest traffic in Western Trunk Line territory is in Zone 1, which has the lowest class rate scales in Western Trunk Line territory. Nowhere in that zone are rates as high as 147 per cent of the Eastern scale. The shortest possible distance from St. Louis, Missouri, to Omaha, Nebraska, is 416 miles. For [fol. 1056] that distance, all of which is in Zone 1, the Appendix E scale prescribed in the Eastern class rate investigation would produce a first class rate of $1.01. 147 per cent of that figure would be $1.48. The first class rate prescribed by the Commission in the Sixth Supplemental report from St. Louis to Omaha, is $1.28.

As previously pointed out, the railroads must live on the traffic they carry and the revenue from that traffic, of necessity, must be distributed over the whole body of traffic according to the varying characteristics of that traffic. That principle was recognized in the general increase cases such as Ex Parte 123 and 148 when the Commission allowed different degrees of increase on manufactured articles and agricultural products. As recently as March, 1942, it limited its authorized increases to 3% on the products of agriculture and livestock, while allowing double that amount of increase on manufactured articles generally.

In attempting to set up a basic class rate structure in the Western territory one of the primary considerations should be the character of traffic moving in that territory upon which the railroads depend for their existence. In the Western district the products of agriculture (including livestock and products), products of the forest, products of mines (excluding coal and coke), petroleum and petroleum products make up the major portion of the tonnage [fol. 1057] carried. The commodities in those groups in 1941 comprised 66.71 per cent of the total carload traffic carried in the Western District. In the Eastern District the same groups of commodities comprised 27.43 per cent of the tonnage carried, while in the Southern region the same groups of commodities comprise 45.85 per cent of the carload traffic carried.

In conclusion, it is the judgment of the Western carriers that a general revision of the present basic class rate structure is unnecessary. And that under present conditions such a revision contemplating new theories, new formulas, and further experiments in rate making should not be required.

Mr. Gault: The witness has an oral statement he would like to add, a very brief statement if the Commission please.

By Mr. Gault:

Q. Go ahead, Mr. Tharp.

A. On sheet 19 I point out commodity groups that account for 66.71 of the total carload traffic carried in the Western District. I would like to add that those commodities that make up that 66.71 per cent of the total carload traffic carried produce 56.22 per cent of the carload freight revenue in the Western District. The commodities that make up but 27.43 per cent of the total carload traffic carried in the Eastern District produced but 26.71 per cent of the carload [fol. 1058] freight revenue. The commodities that make up 45.85 per cent of the total carload traffic carried in the Southern Region produced 44.29 per cent of the carload freight revenue.

Qu. Does that conclude your statement, Mr. Tharp?

A. Yes, sir.

Mr. Gault: I offer Exhibit No. 64 in evidence, if the Commission please.

Chairman Aitchison: Is there any objection to the receipt in evidence of Exhibit No. 64? (No response). If not, it is received.

(Exhibit No. 64, Witness Tharp, received in evidence.)

Mr. Gault: You may cross-examine.

Chairman Aitchison: Mr. A. L. Reed.

Cross-examination.

By Mr. A. L. Reed:

Q. Mr. Tharp, on pages 103 of your exhibit, through to page 108 you have what I believe you have stated in your

direct testimony to be rates made by the rail carriers to meet motor truck competition.

Yes, sir.

Q. Do you know in all instances whether those rates were published first by the rails or by the motor carriers?

A. Well, I cannot tell you whether the precise columns that the rail carriers published were the precise columns published by the motor carriers, but these rates were [fol. 1059] established to meet either common carrier competition by truck, contract carrier competition, or perhaps competition of private truck carriers.

Q. Do you know which of the three modes of truck carriers constituted your competition in any or all of the instances listed on those pages of your Exhibit No. 64?

A. The degree of the competition from one of the three might vary with each item on there, Mr. Reed. I could not attempt to give you a breakdown of that.

Q. Insofar as the common carrier truck lines are concerned you are not able to say at this time whether they published these rates first or the railroads, am I correct in that statement?

A. No, I could not say as to that.

Q. I believe you subscribed to the theory that the common carriers, or some form of motor truck competition is in existence countrywide insofar as the rail carriers are concerned?

A. We have heard about it all over the United States.

Q. I notice that on Exhibit No. 64, page 103, there seems to be some variation in the policy of the carriers in Official territory as compared with Western Trunk Line territory. For example, take the first two items: On abrasives, the policy seems to be uniform. On agricultural implements the Western carriers reduced the rates and established [fol. 1060] an exception, but the Eastern carriers did not. Could you offer some explanation of that difference in policy?

A. The only explanation I can give for it is that the Eastern lines concluded that truck competition did not require making any reductions in their territory.

Q. And the same answer would be given with respect to the other instances of the same character on pages 103 and 108 of Exhibit 64?

A. I think that is true, or the reverse might be true.

Mr. A. L. Reed: Thank you, sir.

The Witness: The Official lines may have lower columns than we have, but for some reason we did not think it necessary to make corresponding reductions, or as great a reduction.

By Chairman Aitchison:

Q. It is not just a bit absurd to find that you put columns in that are just one-half of 1 per cent apart?

A. I do not think so, Mr. Chairman. The Commission has often required us to do that, in some cases.

Q. Well, possibly we were misled. What do you think about it? Do you not think it can be cut down to a smaller number in the interest of simplicity of rates, still considering matters such as alternative aggregates, Fourth Section situations, divisions and the like?

[fol. 1061] A. I think there is a reason for each individual column rating that we have published. Of course, to answer your question as to whether some of those could be eliminated would require an examination of each commodity to determine whether or not that column could be eliminated.

Q. Sometimes it would not make a difference of a dollar in a whole carload, would it?

A. No, but we have had serious complaints whenever we make an effort to eliminate a column from shippers who would wind up with an increase of 1 cent per hundred pounds in their freight rates. I have particularly in mind the linseed cake and meal industry as well as the soy bean cake and meal industry. They have now pending before your Commission a complaint making serious complaint for that very reason. We changed the column which resulted in both increases and reductions. They want those increases eliminated.

Q. You have, sometimes, do you not, columns which are the same percentage of first class, but by reason of conditions that are attached, bring about widely different rates?

A. That is true. In a manner of illustrating, we might have two columns 25. One of them might be column 25-G, if you please, and the other one just straight 25. That column 25-G, if you please, would apply on some agricultural commodity upon which we were permitted to increase the rates only 5% under Ex Parte 123, whereas on the straight [fol. 1062] column 25, that would carry the full 10% increase that was authorized under Ex Parte 123. We have any

number of columns in our tariffs that can be accounted for through the changes made in Ex Parte 115 and Ex Parte 123.

Q. Have you been trying to work those down to a smaller number?

A. Pardon me?

Q. Have you been trying to work those down to a smaller number?

A. Efforts have been made to do that. We are constantly attempting to do that.

Q. This matter of multiplicity of columns has been complained about by shippers, has it not?

A. I do not recall that there has been any complaint from a shipper as to the multiplicity of the columns. Their main purpose is to see that their freight rates are not disturbed, or increased by the elimination of some column.

Q. Well, I personally heard a complaint where the allegation was that the alleged favored area had a very much longer list of columns than the area that was doing the complaining.

A. What was that?

Chairman Aitchison: The reporter will read it.

(Record read.)

Chairman Aitchison: Just to be specific, from the East [fol. 1063] to Denver, as contrasted with from the East to Salt Lake.

The Witness: From the East to Denver as compared to from the East to Salt Lake?

Chairman Aitchison: Yes.

The Witness: Of course, I do not understand what the character of the complaint could be. Certainly the number of columns in the tariffs should not have any effect upon the rates that are being paid by the receivers at Denver as compared to the receivers at Salt Lake.

Chairman Aitchison: It was a case where the rates were very much more finely graded.

The Witness: It could be, of course, that the Western Trunk Line railroads, to meet truck competition from Chicago, if you please, to Denver, had established a column on some particular item of commerce that would be lower than the column that would apply from Chicago to Salt Lake City, if the carriers had concluded that the same competition

did not exist as between Chicago and Salt Lake City as existed between Chicago and Denver.

By Chairman Aitchison:

Q. Has it been your observation that the demand for multiplicity of columns with fine differentiation in rates is due to the fact that packing requirements were supposed to have become better in the way of avoiding loss and damage claims and so forth, and that that was much more keen at the time when commercial competition was keenest, [fol. 1064] than when there was a lush market for everybody?

A. I think we have just gone through a period when that consideration was important. The packing requirements for rail movement were a little more stringent than were the packing requirements for moving traffic by truck, and of course anything that would increase the cost to the manufacturer of packing his commodities would of course be a factor in his selection of transportation services.

Q. Well, was this not a common historical occurrence in our times when competition between manufacturers was very keen and markets were hard to get: We will say a manufacturer had column 68 and so did his rival. By a very slight improvement in his packing he was able to go to the traffic officers of the lines serving him and make a showing that his article was just a shade more desirable as an article of traffic than his rival's, and thereby he was entitled to and did get 67%?

A. I do not recall any such instances as that. That, it seems to me, would perhaps be more a classification question rather than one of the establishment of rates as between packers.

Q. Did not a lot of these columns come in, in that way?

A. I do not recall a specific instance that had to do with the packing requirements, where the packing requirements [fol. 1065] determined what column would be applied.

Chairman Aitchison: Is there any further cross examination?

Mr. Little: I have a few questions, Mr. Chairman.

Chairman Aitchison: Mr. Little.

By Mr. Little:

Q. Mr. Tharp, will you please refer to page 13, the third paragraph of your statement.

A. Yes.

Q. Is it not a fact, Mr. Tharp, that the class rates applicable as a result of the decision in the Western Trunk Line class rates case between Central territory and Western Trunk Line territory are generally published to apply between the origins and destinations involved?

A. (No answer.)

Q. For example, from Cleveland, Ohio, to Omaha or Lincoln, Nebraska, the class rates are generally published to apply between those points, are they not?

A. The first class rates are, second class and third class.

Q. These scales which you refer to in the third paragraph on page 13 are all based on the prescribed basic first class rates prescribed as key rates in the decision of the Commission, are they not?

A. That is right. Your basic first class rate applies between, and the other columns are geared to those basic first class rates.

[fol. 1066] Q. Is it not also a fact that in the original decision the Commission required the use of the Western Classification to apply to the movement of traffic either east or west-bound between those points?

A. Yes, sir.

Q. Just what, then, is the meaning of your statement and what is the application of the column adjustment referred to in the third paragraph on page 13, in the present rate adjustment?

A. If I understand your question, it means that where the Official Classification governs—in other words, in an eastbound direction—we have in the tariff 122 columns of rates lower than first class; but where the Western Classification governs—that is, westbound—we have 110 columns of rates in the tariffs that are lower than first class, but geared to the first class rates.

Q. Then the situation today is that you have the Official Classification applying one direction and the Western Classification applying the other, with the same basic class rate adjustment with reference to the prescribed first class rate, is that right?

A. That is right.

Q. Are the ratings either resulting from the separate classifications or the exceptions thereto the same on a given commodity eastbound and westbound?

[fol. 1067] A. Not necessarily, no.

Q. Then although the basic class rate adjustment is uniform in both directions with reference to the prescribed first class rate, the rates applicable and the resulting freight charges would vary on shipments between two points, depending upon whether the shipment moved eastbound or westbound, would that not follow?

A. Depending upon the class it took.

Q. When did the carriers first depart from the original requirement that the Western classification should be the basis for the application of these class rates between Central and Western Trunk Line territory?

A. August 20, 1935.

Q. Mr. Tharp, does the present situation with variations in applicable ratings eastbound and westbound result from any change in the original decision of the Commission or does it flow from the action of the carriers involved?

A. I would say both.

Q. Is it in the main the actions of the carriers in simply publishing rates that did not exceed the maximum prescribed basis? Is that the explanation?

A. I think that is one explanation.

Q. Well, would that be the principal explanation?

A. The difference in the columns might be because of rates prescribed by the Commission, westbound or east-

[fols. 1068-1069] bound, as the case may be. They might be as a result of voluntary action on the part of the carriers in reducing rates eastbound or westbound as the case may be. I do not know. I could not say just what percentage of the columns would be chargeable to either the Commission or to us, the carriers.

Q. At any rate, you would agree that the situation described in your statement is very different from that resulting from the original decision requiring rates applicable between, and the Western Classification governed in both directions; that is true, is it not?

A. The situation is different from that originally prescribed by the Commission in the first Western Trunk Line Class Rates case in that respect, yes.

Mr. Little: Thank you.

Mr. Gault: Does that conclude the cross examination?

Chairman Aitchison: Is there any further cross examination of this witness? (No response.)

By Mr. Gault:

Q. Is there anything you want to say on redirect?

A. I have nothing further, no, sir.

Mr. Gault: That is all.

Chairman Aitchison: You may stand aside.

(Witness excused.)

Chairman Aitchison: We will suspend until 9:30 tomorrow morning.

(At 5 o'clock P. M. September 25, 1942, adjourned to 9:30 o'clock A. M. September 26, 1942.)

[fol. 1070]

Hotel Claypool,
Indianapolis, Indiana,
Saturday, September 26, 1942.

Met pursuant to adjournment at 9:30 A.M.

Before: Division 2 of the Commission; Hon. Clyde B. Aitchison, Chairman of the Commission, presiding; Hon. Walter M. W. Splawn, Commissioner; Hon. J. Haden Alldredge, Commissioner.

Present: Paul O. Carted, Examiner, W. J. Koebel, Examiner, T. Leo Haden, Examiner.

Mr. John J. Murphy, South Dakota, Mr. George McConnaughy, Ohio; and Mr. W. H. Scott, South Carolina, comprising a cooperative committee of State Commissioners.

Appearances: As heretofore noted and the following additional:

N. W. Hawkes, and E. A. Hodkinson, 143 Liberty Street, New York City, New York, appearing for Rail Carriers in Official Classification Territory.

Proceedings

Chairman Aitchison: Come to order. According to the understanding of yesterday, and the announcement made, Mr. E. H. Thornton of New Orleans, Mr. W. C. Creighton

[fol. 1071] of Charlotte, North Carolina, and Mr. Clarence Mitchell of Memphis, Tennessee, desire to get their testimony into the record so that they can get away. If satisfactory to all concerned, that testimony may be taken before Examiner Carter, beginning immediately, in the Club Room on the 9th floor of this hotel. I understand that the exhibits of Mr. Thornton have already been distributed to the parties who desire them.

Mr. McCollester: This presents rather a difficult situation, Mr. Chairman. Being only human, I cannot very well be in two places at once. I would like to know, if I may, please, what is going to be presented here this morning?

Mr. Olson: I can state that the next witness, on behalf of the Western Lines, will be Mr. J. G. Morrison, who will confine his testimony largely to class rates in the states of Minnesota and North Dakota. He will take on direct, I should estimate, not to exceed one hour.

Mr. Norman: May I also state, if the Chairman please, that the exhibits of Mr. Creighton and Mr. Mitchell have also been distributed.

Chairman Aitchison: Well, then, Examiner Carter may proceed immediately to hear the testimony of Mr. Thornton, Mr. Creighton and Mr. Mitchell.

Mr. Norman: May I also say, please, that the exhibits [fol. 1072] of Mr. Hart have been arranged in sets, and are ready for distribution.

Mr. Hollopeter: If the Chairman please, I understand that the hearing downstairs will involve several exhibits, that have already been distributed, I wonder if we could have those identified now, so that we may know what exhibits to take down there, and what to leave here?

Chairman Aitchison: Mr. Thornton and Mr. Norman can probably give you that information.

Mr. Olson: May I proceed, your Honor?

Chairman Aitchison: If you will.

Mr. Olson: Mr. Morrison.

JAMES G. MORRISON was sworn and testified as follows:

Direct examination.

By Mr. Olson:

Q. Please state your full name, residence and occupation.

A. James G. Morrison; St. Paul, Minnesota; General Freight Traffic Manager of the Northern Pacific Railway, in charge of rates and divisions.

Q. How long have you held that position?

A. I have held that title for about three years. Prior to that time my title was Freight Traffic Manager. Previous to that, I was General Freight Agent, from 1925 on.

Q. For how many years have you been engaged in traffic [fol. 1073] work, either with the Northern Pacific Railway, or other railroads?

A. About 50 years.

Q. With what phase of this investigation do you propose to deal?

A. My testimony will relate to that part of the state of Minnesota north and west of the Twin Cities, or more specifically, north of the 45th parallel; and the state of North Dakota—that territory being served largely by the Northern Pacific and Great Northern Railways, as well as the Soo Line.

Q. What are the eastern and western termini of the Great Northern and the Northern Pacific Railways?

A. St. Paul-Minneapolis, Duluth, Minnesota, and Superior, Wisconsin.

Q. And the western termini.

A. The Puget Sound cities—Seattle, Tacoma, Portland, Oregon, and Vancouver, British Columbia, in the case of the Great Northern.

Q. What northwestern tier of states do those railways serve?

Chairman Aitchison: Oh, we will take judicial notice of the geography of the United States.

Mr. Olson: Very well.

By Mr. Olson:

Q. Strictly speaking, Mr. Morrison, are the states of [fol. 1074] Minnesota and North Dakota in Western Trunk Line Territory?

A. The southern part of the state of Minnesota has always been so considered, but not Minnesota north of the Twin Cities, nor has North Dakota been considered as a part of Western Trunk Line Territory. The reason for that is—well, first I might say this, that even today neither the Great Northern Railway nor the Northern Pacific Railway is a member of the Western Trunk Line Committee. The Northern Pacific and Great Northern lines were built north and west of the Twin Cities, whereas the Western Trunk Lines were built into the Twin Cities from the south and east. The Western Trunk Lines, or at least two of the most important of them dominate with their rails the state of South Dakota east of the Missouri River, and almost from the beginning, for that reason, South Dakota became a part of Western Trunk Line Territory.

Q. Will you describe briefly the history of the development of the railroads serving Minnesota and North Dakota.

A. Well, as I stated, the Northern Pacific and Great Northern were built from the Twin Cities and the Head of the Lakes, into north-central Minnesota and North Dakota, in the 70's or 80's; and I might add that from the beginning they made their own rates from the Twin Cities into that area independent of the Western Trunk Lines, and quite [fol. 1075] apart from the rate adjustments which were made into the Twin Cities from the East. That general state of affairs continued until recent years. The Minnesota-North Dakota District to which I am referring is a section of light population density as compared with the territory south. There is quite a sharp division of population at the 45th parallel, which extends just north of the Twin Cities, the population north of that parallel being quite a little less than the population south, in the state of Minnesota. To illustrate that statement the population north of the 45th parallel in Minnesota, excluding the population of Ramsey County and Hennepin County, most of which is contributed to by St. Paul and Minneapolis, is 19 per square mile. North of the 45th parallel, if the population of Ramsey and Hennepin Counties is included, the figure is 34. South of the 45th parallel, excluding the population of Ramsey and Hennepin Counties, there are 37 people per square mile; and if the population of those two counties referred to is included, the figure is 76 per square mile. The over-all population of Minnesota per square mile, using

the 1940 census in all of these cases, is 35. In the state of North Dakota, the population is 9 per square mile.

Q. Now, if I may interrupt you right there, Mr. Morrison: Have you caused to be distributed a map of the states of Minnesota and North Dakota, showing the 45th parallel? [fol. 1076] A. Yes, sir.

Mr. Olson: May we have the map identified as the next exhibit number, if the Commission please.

Chairman Aitchison: 65.

(Exhibit No. 65, Witness Morrison, marked for identification.)

By Mr. Olson:

Q. Please proceed.

A. I was going to say something about the rate situation, if that is in order at this time, speaking more particularly with respect to the class rates which are involved in this proceeding. We made our own rates from the Twin Cities and points west on a basis that it was felt was fitted to the requirements of our territory, most of the class rate traffic being shipped from the Twin Cities and the Head of the Lakes, consisting of merchandise, much of which had been received from the East in its original form, but the ownership had been changed at the Twin Cities or the Head of the Lakes, and it was then forwarded into our territory. From the East into the Twin Cities the rates from the very early times were depressed, because of rate wars, and the influence of lake-and-rail competition from the East to the Head of the Lakes. From the territory east of the Twin Cities, overhead through rates were not made or concurred in by the northern lines to Minnesota and North Dakota; for two reasons. In the first place, the measure of the [fol. 1077] rates east of St. Paul, because of the matters I have mentioned was so low that, in our opinion, when those factors were added to our own rates west of the Twin Cities, the resulting two-factor combination through rates were not out of line, or unreasonable. Nor was that situation complained of in any important way until the Fargo case, 98 I. C. C. 691. The characteristics of the country north and west of St. Paul are agricultural, to a very large degree. There is no manufacturing in the territory, outside of the Twin Cities and Duluth, and no industrial activity, the activities of the population being confined to agriculture,

except on the Iron Range of Minnesota north of Duluth. The other reason for what we considered to be the proper use of the combination in making overhead through rates, was the fact that an expensive interchange, involving delivery from the eastern roads to the northern lines, took place at Minnesota Transfer, in the Twin Cities group, so that a through shipment from Chicago and New York going out into North Dakota was subjected to interchange costs which in our opinion justified the imposition of the full combination of locals—for reasons which the cost situation contributed to.

Q. Can you give us a little more detailed information with respect to the composition of the traffic on the Northern Pacific, as compared with that of a typical eastern line, [fol. 1078] for example.

A. Well, in the calendar year 1941, the Northern Pacific, as an example, handled 21,877,161 tons of freight, including less than carload, which was divided, according to these percentages: Products of Agriculture, 19.9 per cent; Products of Animals, 2 per cent; Products of Mines, 24.8 per cent; Products of Forests, 29.8 per cent; Manufactures and Miscellaneous, 22.4 per cent; and less than carload, 1.1 per cent. Referring for the moment to Manufactures and Miscellaneous, which made up 22.4 per cent of the tonnage, a very considerable part of that traffic consisted of commodities which in our territory are carried at commodity rates, such, for example, as petroleum, cement, sugar, newsprint paper, canned goods and scrap iron; and if we simply subtract the tonnage of the particular commodities that I have just enumerated from the figure of 22.4 per cent, we are left with a figure, on the Northern Pacific, of 13.9 per cent for Manufactures and Miscellaneous, which perhaps moved at class rates, although even some of that traffic moves at commodity rates. But assuming for the moment that all of the 13.9 per cent would move at class rates, and thus be involved in this proceeding, it can be seen that something over 84 per cent of the Northern Pacific tonnage was carried at commodity rates.

By Chairman Aitchison:

[fol. 1079] Q. What area is covered by the 100 per cent.

A. I could not hear that, your Honor.

(Question read.)

A. The entire Northern Pacific System Lines, from Minnesota to the Pacific Ocean.

By Chairman Aitchison:

Q. Well, that is not all before us now.

A. It is not what?

Q. Before us now.

A. No, that is true, it is not; but I was merely attempting to give you, Mr. Chairman, the picture of the traffic on the Northern Pacific, and I was going to say something else about the Manufactures and Miscellaneous, which I have reduced, now, for this purpose, down to 13.9 per cent. I was going to say that most of that is overland traffic, to and from the Pacific Coast, a great majority of which commodities are carried under commodity rates, and in many instances at rates which were made to meet intercoastal competition. The purpose of that, of what I am outlining here, is to indicate that the class rate traffic into the northern Minnesota-North Dakota territory is very small, and in fact it is so small that it may be questionable as to why overhead through rates from the East and South into our territory are warranted, although we know that we have them, and we have had them, under the 17000 Part-2 adjust-[fol. 1080] ment, for the past 11 years; and we are not now suggesting that any change be made in them.

By Mr. Olson:

Q. Do you have comparable figures, Mr. Morrison, for a typical eastern line?

A. Yes, sir, but I would first like to put in the Great Northern figures along with the Northern Pacific figures, if that is agreeable to the Commission. The Great Northern Railway has such a very large tonnage of iron ore from northern Minnesota that the comparable figures of that line might be interesting. In 1941, the figures for that line were as follows: Products of Agriculture, 12.6 per cent; Products of Animals, 0.9 per cent; Products of Mines, 65.1 per cent; Products of Forests, 9.1 per cent; Manufactures and Miscellaneous, 11.7 per cent; and less than carload, .6 per cent.

Q. Those figures are also system figures, are they not?

A. They are also system figures for the Great Northern Railway, yes, sir, taking out the same commodities, as to

Manufactures and Miscellaneous that were taken out in the case of the Northern Pacific a few moments ago, which reduces the Great Northern percentage of figure of Manufactures and Miscellaneous which were perhaps carried at class rates, to 6.5 per cent.

Q. Now, Mr. Morrison, you were going to give us some comparable figures for a typical eastern line.

[fol. 1081] A. Taking the New York Central, for the same year, the system percentages were as follows: Products of Agriculture, 6.1 per cent; Products of Animals, 1.5 per cent; Products of Mines, 57.3 per cent; Products of Forests, 2.6 per cent; Manufactures and Miscellaneous, 31 per cent; and Less than Carload, 1.5 per cent.

Q. Now I believe you mentioned the Fargo case, Mr. Morrison. Was that the first departure from the use of combinations over the Twin Cities on class traffic from the east to the west?

A. Yes, sir, it was. That complaint was filed in '22.

Q. 1922.

A. Yes, sir.

Q. Will you tell us something about the issues involved in that proceeding, and what the determination by the Commission was in that case.

A. Well, there were numerous issues involved in the case, but the primary one, or what I think was the primary issue, was the question of discrimination against Fargo, and preference of Moorhead, Minnesota, in connection with class rates.

Chairman Aitchison: Why not consider the report of the Commission in that case as in evidence here, Mr. Olson?

Mr. Olson: The Chairman suggests, Mr. Morrison, that you omit any comment with respect to the Fargo case. The [fol. 1082] decision will speak for itself.

The Witness: Very well.

By Mr. Olson:

Q. Following the decision in the Fargo case, what action, if any, did the Northern Lines take which eventually led to the Western Trunk Line investigation?

A. The decision in the Fargo case came out about 1925, at a time when Ex Parte 87 was pending, or about the time it had been decided; and the Hoch-Smith Resolution was also quite new at that particular time. It was pretty well

understood by the Western Trunk Lines, and by many others as well, that the Western Trunk Line Class Rate structure was subnormal in certain important particulars, and probably in need of important revision, so much so that the Western Trunk Lines embarked upon a program of revising the class rates throughout their territory. While, as I pointed out before, the territory of the northern lines was not strictly speaking within Western Trunk Line territory, we were asked—that is, the northern lines were asked, to join the Western Trunk Lines in their effort to readjust the rates throughout the whole of Western Trunk Line Territory. Some of the Western Trunk Line cities, that is those to which the Western Trunk Lines were able to make rates, were common with the northern lines. Border points and interchange points with the northern lines were being affected; and while we in the north had considerable mis- [fol. 1083] givings as to where we were going to land, we abandoned our original policy and belief that no overhead rates should be made in our territory. As I say, we were persuaded that we should join in that proceeding, although it was very debatable if we could have been left out, anyway; we probably would have been forced in, regardless. In any event, we did join with the Western Trunk Lines, and the proposals were made in Docket 17000 Part-2. The proposals in 17000 Part-2 contemplated a departure from the rate-break over Minnesota Transfer, so far as the intraterritorial feature was concerned, but not as to the interterritorial. The rates prescribed in Docket 17000 Part-2 were, from our point of view, not so unsatisfactory with respect to the intraterritorial feature; that is, they would not have been so unsatisfactory if we had been able to collect those rates, which I think was contemplated by the Commission at the time when the decision was rendered. But the decision in 17000 Part-2 coincided with a change in conditions which was so revolutionary that I do not think it was fully realized at the time. I refer to motor truck competition, which in our territory began to be felt, I would say, along abut 1925 or 1926. Therefore in 1931, December, 1931, when we made the new rates effective in the Northwest from Western Trunk Line Territory, the rates immediately were out of line with rates that we had to make [fols. 1084-1085] as a practical matter, to meet truck competition. Therefore since that time, and since the 6th Supplemental Order in that proceeding, which somewhat

revised the original rates, we have been, generally speaking under the 17000 Part-2 basis, except where we make lower rates to meet motor vehicle competition. Now still discussing for the moment, if I may, the effect of the 17000 Part-2 rates on our territory: The interterritorial rates prescribed from the East were somewhat of a shock to us, because of the very heavy reductions that were made from that eastern territory into North Dakota particularly. I have two or three or four very brief illustrations that I would like to give you for the record at this time, if I may. As an example of the December 3, 1931, adjustment, the first class rate from Detroit, Michigan, to Fargo, North Dakota, was reduced from $2.28 to $1.94, or a reduction of 34 cents. From New York to Fargo the old rate was $2.91, and the new rate was $2.54, a reduction of 37 cents. From Detroit to Bismarck, North Dakota, which is in the center of the state of North Dakota, the old first class rate was $3.02, and the new rate was $2.27, or a reduction of 75 cents per hundred pounds, or 24.8 per cent. From Pittsburgh to Bismarck, the old rate was $3.10, and the new rate was $2.52, a reduction of 58 cents, or 18.2 per cent. Now just one more illustration, if you please. Dickinson, [fol. 10861] North Dakota, is in the western part of the state. The old rate from Detroit was $3.43, and the new rate was $2.47, or a reduction of 28 per cent. From New York to Dickinson, the old rate was $3.80, and the new rate $3.07, or a reduction of 81 cents.

Q. Were those reductions, Mr. Morrison, modified somewhat by the 6th Supplemental Report in Docket 17000 Part-2?

A. Yes, sir, they were improved to some extent, so that the ultimate reductions were not quite so great.

By Chairman Aitchison:

Q. Were those reductions absorbed by all participants, or did you take in large part all of the absorptions?

A. They were absorbed by all of the participants, Mr. Chairman.

By Mr. Olson:

Q. Are the Northern lines at the present time suggesting any changes?

A. No, sir, they are not. While we are not entirely satisfied with the present adjustment, we know of no state of affairs in our particular territory that would warrant any basic change. We have had these rates, now, as I stated before, for 11 years, and have gotten more or less used to them; the shippers in our territory have become adjusted to their use; and it is our respectful suggestion that they be left alone.

Q. While the state of Montana of course is not involved [fol. 1087] in these proceedings, I think it might be pertinent if you would point out what effect the 17000 Part-2 rates had on the rates into Montana from eastern points.

A. Well, the very marked change in the overhead rates from territory east of St. Paul to western North Dakota border points, had the effect of creating quite a depression at the North Dakota border, and a corresponding hump just over the border in Montana. It was immediately developed that combinations over the border points, at all stations in Norfh Dakota, into eastern Montana, would reduce the overhead through rates where there were such rates in effect at the time. Another so-called border point which played a very important part in that dislocation of the rates into eastern Montana, was Sheridan, Wyoming, which, as I recall it, was the extreme northwestern point in Wyoming to which the original 17000 Part-2 rates applied. The combination over these border points in North Dakota, one of which was Beach, on the Northern Pacific, another being Montline, on the Milwaukee, and another being Ft. Buford, on the Great Northern, was the same as the lowest aggregate of intermediate rates, and to an eastern Montana point, such as Miles City, would be made over Beach, on the Northern Pacific, in one instance, and again it would be made over Montline, on the Milwaukee, depending on the eastern point of origin. We found some cases where [fol. 1088] even from the same point of origin in the East, the lowest aggregate of intermediates would be over our own border point, at Beach, as to one class, or certain classes, and over the Milwaukee border point of Montline on other classes.

Q. Did this condition prove unsatisfactory both to the shippers and the carriers?

A. Decidedly so, yes, sir. Some temporary adjustments were made by the Carriers,—that is, adjustments that it was hoped would be temporary—and then that entire sit-

uation got before the Commission in the Great Falls case, and new rates were prescribed into the eastern half of Montana on the same underlying principle as that which controlled the 17000 Part-2 rates from points further east.

Q. The point that you are now making; I take it, Mr. Morrison, is that if any radical changes are made as the result of this proceeding, we will be confronted with the same situation?

A. Yes, sir, that is correct; we will be confronted with the same situation that we were before, absolutely.

Q. Now will you tell us something about the truck competition that is encountered in Minnesota.

A. Well I referred before to the fact that it got under way along about 1925 or 1926, and by 1930 or 1931 it had expanded very rapidly, one reason being that in the interval before highways in Minnesota had been extended generally, [fol. 1089] a paved highway was completed between the Twin Cities and Duluth, along about 1930, and the motor trucks immediately got organized, and began handling less than carload traffic particularly, and in some cases carload traffic, in competition with the railroads, so that our loss in less than carload traffic was quite substantial between the Twin Cities and Duluth. The depression contributed to some extent to those results, but taking it by and large, throughout our territory, I think I can safely say, from observation and experience over all of that period of time, that the great loss of less than carload traffic, at least in the case of the Northern Pacific, although I think that it will also apply to the other lines up there, was due to motor truck competition. I would like to give for the record at this time a few figures of our own, to illlustrate that, if I may. Using Northern Pacific System figures, in 1922 we carried 618,129 tons of less than carload tonnage, out of a total of all tonnage, carload and less than carload, of 21,451,028. Five years later, in 1927, the less than carload tonnage had been reduced to 500,107, whereas the over-all tonnage for that year was a little larger than in 1922, or 23,000,000. In 1927, the over-all tonnage was 23,102,319, and the less than carload was 531,764. In 1929 the less than carload had dropped to 500,107 tons, as against an over-all tonnage of 23,157,702. Then coming to 1939, [fol. 1090] the less than carload had dropped to 210,248, and the over-all tonnage that year was 17,129,031. In 1941, which is the last year year I have here, the less

than carload was 239,485, and the total over-all tonnage handled, carload and less than carload, was 21,877,168. Now just one or two figures to illustrate the effect on the Northern Pacific less than carload tonnage of the completion of the paved highway between the Twin Cities and Duluth, about 1930. In the year 1928 the Northern Pacific handled from Minneapolis to Duluth, 90,215 tons of less than carload freight. Three years later, in 1931, that had dropped to 63,170 tons, or 30 per cent less. Now I admit that part of that loss was due to the depression, the effect of the depression, which was becoming quite a problem in 1931.

Q. Now, Mr. Morrison, will you tell us something about the rail-lake and rail rates and routes from the East into the Northwestern Territory, leading up to the decision of the Commission in 3662,—without going into detail as to what the Commission did in that proceeding.

A. Well, the lake-and-rail rates from the East to Duluth —and when I say "from the East" I mean, Eastern Trunk Line Territory,—were made in relation to the rates not only rail-and-lake, but all rail to Chicago. The result was, some very low rates lake-and-rail to Duluth; that is, low rates measured by all-rail standards in other territories, [fol. 1091] at least. The Twin Cities had the benefit of overhead rates lake-and-rail made primarily through Duluth, but at one time equalized through Chicago and Milwaukee. Those overhead rates were made in relation to the lake-and-rail rates to Duluth, and also having in mind the all-rail rates from the East to the Twin Cities. In the territory west of Duluth, through rates were not made lake-and-rail, except to the extent that in the Fargo Case the Commission had required the establishment of a proportional scale of rates from Duluth to Fargo, which, added to the lake-and-rail rates east of Duluth, produced an overhead charge that was lower in the case of Fargo than to other points in that general area, that is, west of Fargo, excepting Grand Forks, North Dakota, that was given a relative basis. In Finding 11 of the 17000 Part-2 decision, the railroads were required to readjust their lake-and-rail rates in harmony with the new all-rail adjustment. The interval between the effective date of the all-rail rates, December 3, 1931, and the opening of navigation on the Great Lakes in the spring of 1932, was too short to

admit of prolonged negotiations, or consideration, but we did the best we could in that period of time, and after a number of meetings we reached an understanding with the lake lines and the eastern railroads that certain through rates would be put into effect, lake-and-rail, from the East [fol. 1092] to this entire Northwestern area. Those rates were suspended in I & S Docket 3662. As the result of the decision in the latter proceeding, we now have a complete scale of lake-and-rail rates from Eastern Trunk Line Territory to the Northwest. In the early days, in my experience, the lake-and-rail route from the East to the Head of the Lakes, that is, to Duluth, and the Twin Cities, and to some extent into the interior, was used very extensively for the movement of westbound merchandise. In recent years that movement has not been so important in relation to the all-rail movement into the territory generally, and within recent weeks Governmental orders have been issued, the effect of which have been to suspend for the time being the lake-and-rail service.

Q. Now, does the existence of the rail-lake-and-rail route account in part for the use of the Official Classification to and from the Twin Cities and the East.

A. Yes, sir, I think it has been a major influence. The lake-and-rail lines from the East, operating into Duluth, in making their rates in the early days in relation to and in competition with the rates into Chicago, use the Official Classification. The all-rail rates from New York and Boston to the Twin Cities and Duluth were made in competition with the lake-and-rail route, using the Official Classification for the same reason. That is, it was part of the competition which the all-rail lines were meeting. In the [fol. 1093] case of rates from the intermediate territory in the East, all-rail rates, the Official Classification was used. The Official Classification, I might say, so far as the Western Lines are concerned, was something that was considered as belonging entirely to the region east of Chicago, or east of the Mississippi River. The Western Lines always had their own classification. The time was when the Northern Pacific Railway had its own classification up there in the Northwest.

Q. I did not intend to draw you into classification matters, Mr. Morrison. I merely wanted to ask you that one question. I understand that classification matters will be

dealt with by a subsequent witness. That is correct, is it not?

A. I understand so.

Q. Well then, before we come to the matters contained in the Commission's notice of January 9, do you have any further general comment to make?

A. I think not.

Mr. Olson: If the Commission please, will it be necessary to repeat each one of these questions?

Chairman Aitchison: We do not have them before us, and therefore I think we would follow you a little better if they were repeated, or at least, if the substance of the questions was suggested.

[fol. 1094] By Mr. Olson:

Q. The first question, Mr. Morrison, is,—and I will quote verbatim from the question—: "The present differences between the levels of, intraterritorially and interterritorially, in and between Official, Southern, Southwestern and Western Trunk Line Territories, (a) Class Rates, and (b) rates on all other traffic." Are you prepared to offer an answer to that question?

A. Well I do not know whether I can satisfactorily answer any of these questions which the Commission has listed for consideration, or not, but I am willing to do the best I can, in my own way, and give my thoughts in this connection. Now, as I stated before, our territory up there we think has had a very good history in the matter of rate-making, and particularly in this, that originally we made our own rates, and the shippers in the territory generally were not interested in what the rates were in the East, or in the Middle West. Take for instance a receiver on our railway up in North Dakota at—well, Steele, North Dakota, will serve as an example, 400 miles west of the Twin Cities. He knew what his rate was from St. Paul-Minneapolis, and incidentally, they were what he looked to for most of his supplies, business relations, and so forth,—either the Twin Cities, or the Head of the Lakes; and the Twin Cities man, in shipping out to Steele, had a certain rate. The present rate is $1.71 first class. The Chicago shipper is twice the [fol. 1095] distance from Steele that the St. Paul man is, but his first class rate, that is, from Chicago, is $2.46, or 44 per cent higher than the rate from St. Paul, for a

100 per cent greater distance. The New York man, shipping to Steele, North Dakota, whose distance is more than four times the distance from St. Paul, pays $3.45 first class, or 100 per cent higher than the rate from St. Paul. Now, it might be suggested, and I think it is true, that such small spreads over the Twin Cities for so much greater service are perhaps unwarranted, particularly when it is remembered that we have this expensive interchange service at the Twin Cities gateway, where, in the case of a carload of freight moving at the class rates, for instance, from Chicago, the Chicago-St. Paul line brings that car into the St. Paul yard, takes it out of its train there, puts that car with other cars making up what is called a transfer, and moves it over to Minnesota Transfer interchange yard, where it is again worked over and handled by the Minnesota Transfer Railway engine to what is called Park Junction on the Northern Pacific, where the Northern Pacific first takes possession of the car, and moves it to its North Town Yard in Minneapolis, where it is again switched around and out into a train going out into North Dakota. The intermediate service, that is, the service between the breakup yard of the Chicago-St. Paul line at St. Paul, and the outgoing yard [fol. 1096] of the Northern Pacific Railway in North Minneapolis, involves several miles, actually about 10 or 12 miles, in the case I have illustrated. Now, in the case of less than carload freight—and of course in this particular Northwestern area most of the class rate traffic is less than carload—the interchange is handled similarly; that is, the Chicago-St. Paul line brings the freight into St. Paul, and in one way or another, must get it over to the outgoing northern line. Now, we who have lived with that situation up there for so many years, are pretty well persuaded, from observation and discussions in the Operating Department, that a shipment from Chicago or some other point east, going out into North Dakota, handled through the Minnesota Transfer or Twin Cities Interchange Yards, is no less expensive in its handling than two separate shipments would be, one from Chicago to St. Paul, and another from St. Paul out into North Dakota. Therefore I say that such a spread in the rate over Minneapolis from New York, of the difference between $1.71 and $3.45, or approximately 100 per cent, seems to us very low. Now, of course, there may be reasons why, in a broad territory such as the territory in the United States east of the Rocky Mountains,

regardless of our local situation, we will have to submit to some sort of overhead rates, just as we have been doing in the last 11 years, but we still have the hope that when [fol. 1097] it comes to making these overhead rates, and working out the technical questions of the progression in the scales, our revenue will not be so affected as it was in 17000 Part-2,—that is, provided that any change at all is going to be made.

Q. Now, have there been any changes in the territory that you have been talking about, other than the advent of truck competition, and perhaps the change in the composition of the traffic due to the war?

A. No, sir, there have not. The principal change that has taken place in the last two years, of course, is the bulge in the traffic that we have experienced here in the last 18 months, due to the war effort. We are feeling that stimulus to quite a degree, in common with the other Pacific Coast Lines. I think perhaps as a group the Pacific Coast Lines have noted a greater increase in their over-all traffic than the lines in the other parts of the country. However, that is just my impression. I have not seen any figures on it. But the great bulk of the increased traffic which we have been handling, and that we are currently handling, is traffic to and from the Pacific Coast. Little or none of it has developed that comes to rest in this near Northwest Territory. We do not have any war plants in northern Minnesota, outside of the Twin Cities area, and the Head of the Lakes—in either northern Minnesota, or North [fol. 1098] Dakota—that I have heard anything about, where there are quite a number of such plants in the Pacific Northwest area; and, as I stated before, this increase in traffic is almost wholly the result of the large overland movement to and from the Pacific Coast. The traffic that we depend upon for our earnings in these times has not increased, on the whole. As a matter of fact, in some important departments of it, there has been a decrease.

Q. Now, what is your answer, if any, Mr. Morrison, to question No. 2, which reads as follows: "The method or methods to be used in the construction of interterritorial class rates, if more than one rate level is prescribed."

A. Well I do not think I have anything to add with respect to that, to what I said in answer to question 1.

Q. Very well. Then I will pass to the next question, question No. 3, which is: "The progressions in the present class rate scales applicable in Official, Southern, Southwestern and Western Trunk Line Territories."

A. Well, I think in general my attempt to answer question No. 1 covers that also. I might illustrate that just briefly, if the Commission wants to go into that any further, by taking a town on the Northern Pacific Railway, say, 100 miles north of St. Paul, which makes it 500 miles from Chicago, roughly, and about 800 miles from Cincinnati. There again we run into the same situation at the [fol. 1099] transfer point, the interchange point, plus the fact that in that case, on an assumed shipment from Cincinnati, there would be another break in the service, in the Chicago District, which would be more or less expensive—perhaps in some respects even more expensive than the other.

Q. Mr. Morrison, have you anything to say with respect to the use of the declining rate of progression when you pass through an expensive terminal, from a low-rated territory into a higher-rated territory?

A. No, sir, I do not think that I care to elaborate upon that subject.

Q. Very well. Going then to question No. 4, which reads as follows: "Shall the progressions in the class rate scales be the same for less than carload or other unit of value, as for carload?"

A. I do not see the occasion for any distinction between the two.

Q. Question 5 reads as follows: "Percentage relation between the rates on the various classes."

A. I think you suggested, Mr. Olson, that the classification witness would probably cover that.

Q. That is my understanding also. Question No. 6 is as follows: "Feasibility of prescribing minimum and maximum, or precise, class rates."

A. We have always worked under the program of being [fol. 1100] held by maximum rates,—that is, broadly speaking, where the Interstate Commerce Commission has taken an interest, and made orders with reference to our rates; and I do not see how we could, as a practical matter, depart from the principle of maximum rates, where made by a regulatory body, because conditions arise daily, or almost

daily, where we have, as a business proposition, to make rates depending upon the peculiar conditions that are presented to us in individual cases. Our responsibility of course is to so regulate our freight rates that, within lawful limits, we can secure the maximum amount of traffic for our railroad. That is our primary responsibility, I would say, involving a responsibility to the stockholders, and also to the public. Now, with minimum rates, as I understand the implications of that term, it would mean that we would find it very difficult, to say the least, to revise a particular rate. We had that experience intrastate in the state of Minnesota for a number of years. Under the operation of the rigid distance tariff law, the rates were, as a practical matter, frozen, and the situation was a constant source of irritation. We have got to have flexibility, if we are going to do the right thing by ourselves as well as the shipping public; so I would not want to see precise rates established, nor would I want to see minimum rates required, except, with respect to the latter, in [fol. 1101] the few instances where minimum rates ought to be established.

Q. Question No. 7 is as follows: "The extent to which the class rate traffic of the railroads is affected by competition encountered from motor carriers and water carriers, common, contract and private."

A. Well, I have given figures which I think will show the effect of motor competition on our traffic, and I do not think I have anything to add, except to say that the motor competition is still with us, although we do hear a good deal about the rubber situation, and how trucks are going to be forced off the highways in some cases,—and as a matter of fact that has been the result in a few instances that have been called to my attention. But we still have, over our railroad, a great many subnormal rates which we put into effect for the purpose of holding our traffic, if possible. Now, if motor truck competition ceases entirely for the next few months, or the next year, it might be argued that we could put many of those rates back upon a normal basis,—that is, referring now to the so-called truck-compelled rates. But if we try to do that, we would bring down a hornets' nest around our ears, and of course we are all so busy trying to do our bit in connection with the war effort, that my own personal judgment is that we

should leave those rates alone for a period of time. I am only speaking generally, of course. There may be par-
[fol. 1102] ticular instances where we might feel that we should depart from that policy.

Q. Now there are two more questions, Mr. Morrison, and question No. 8 is as follows: "The effect upon the movement of class rate traffic, of traffic transported on basis of all-commodity rates, and traffic handled by forwarder companies." Do you care, Mr. Morrison, to venture any answer to that question?

A. Well limiting my answer to this near Northwestern Territory that I have been talking about here, principally, we do not have any freight forwarder traffic in that area. The freight forwarder traffic that we enjoy at the present time is and has been in the far west. We have in the recent years published quite a number of so-called all-commodity rates, or mixed carload rates, or volume rates, and almost invariably such rates were initiated by the trucks, or the trucks initiated conditions which seemed to make the publication of such mixed carload rates advisable and necessary, in fact, if we were to hold our own in competition with the trucks. Some of these all-commodity rates that we have published have been a disappointment in the sense that they have not enabled us to retain traffic, but nevertheless, the carriers in our territory feel that they were warranted in making those rates.

Q. Question No. 9, and the last question, is as follows:
[fol. 1103] "The desirability of stating separately the charges or allowances for pickup and delivery services where those services are performed, or allowances made in lieu thereof, on traffic moving under class rates." Do you have any answer to that question?

A. We have a pickup and delivery service established on our railroad, and we have had it, in general, since about 1936. It has always been a problem, and it is becoming increasingly so as the result of present conditions. It presents quite a problem, and I do not know what we are going to be able to do about it. Some of the original contracts that we have made with trucking companies to perform this service for us, have expired, or they are about to terminate, and we are faced with the prospect of having to pay considerably more money in the future in order to get this work done, and get the service performed; the

service that we hold out in our tariffs than we have had to pay heretofore. The carriers have been giving a lot of thought, and a good deal of consideration, for that matter, but they have not as yet reached any definite conclusion,—that is, the problem of the pickup and delivery provisions in their tariffs; but in our territory, at least as yet, the carriers have not reached any definite conclusion as to how they can solve the problem.

Q. Mr. Morrison, have you been apprised of the position [fol. 1104] that the Minnesota shippers and the North Dakota shippers' representatives will take in this proceeding?

A. No, sir, I have not. I do not have the slightest idea as to what they are going to do.

Q. So that your statement is necessarily limited to that extent, is it not?

A. Yes.

Q. Have you anything further to add?

A. Nothing further.

Mr. Olson: That concludes the direct testimony of the witness, if the Chairman please, and at this time I offer Mr. Morrison's Exhibit No. 65 in evidence.

Chairman Aitchison: Without objection, it is received.

(Exhibit No. 65, Witness Morrison, received in evidence.)

Mr. Olson: The witness is tendered for cross examination.

Chairman Aitchison: Cross examine.

Cross-examination.

By Mr. N. E. Williams:

Q. Mr. Morrison, will you turn to your Exhibit No. 65, please, which is a map, I believe.

A. Yes.

Q. Do you have a copy of it before you there?

A. I have.

Q. Now, referring to Bismarck, North Dakota: Is Bismarck located on any other important railroad, other than [fol. 1105] the Northern Pacific?

A. It is on another railroad—the Soo Line.

Q. And is the Soo Line a member of the Western Trunk Line Committee, to your knowledge?

A. Yes, sir, it is, with respect to its lines east of the Twin Cities.

Q. But the Soo Line is a member of the Western Trunk Line Committee, and participates in the activities of the Western Trunk Line Committee; that is correct, is it not?

A. I think so.

Q. Now, Mr. Morrison, will you point us to some other stations in *the* North Dakota that are served by the Soo Line, shown on your map here.

A. Yes, sir. In the far southeastern part of the state, there is Oakes, North Dakota. That is the only one that I notice, until we get up into the north-east central part, where Carrington is located.

Q. How about Minot, which is shown on the map?

A. That is on the Great Northern Railway.

Q. My question, Mr. Morrison, was with reference to your pointing out to us other North Dakota cities that are served by the Soo Line. Minot is shown by your map as being served by the Soo Line, is it not?

A. Yes.

Q. And Devils Lake.

[fol. 1106] A. Yes.

Q. Do you know of any other important Western Trunk Line carrier, that is a member of the Western Trunk Line Committee, serving the state of North Dakota?

A. The Milwaukee Railroad has several branch lines coming up from the south, from South Dakota.

Q. The Milwaukee serves Fargo, does it not?

A. The Milwaukee serves Fargo, yes, sir, by a branch line from Ortonville, Minnesota.

Q. Linton is shown on your map, is it not?

A. What place?

Q. Linton.

A. Linton is the northern end of one of their South Dakota branches.

Q. How about Edgely, North Dakota?

A. Yes, sir, Edgely is in the same situation as Linton, in that it is on another branch.

Q. How about Oakes?

A. Oakes is not served by the Milwaukee.

Q. No; but the Soo Line.

A. Well, I mentioned that, to start with. Oakes is the only town that is reached by the North Western, in North Dakota, of any importance. The North Western has about

20 miles in North Dakota, a branch, of which Oakes is the northern terminus.

[fol. 1107] Q. So that there are not only large and important jobbing communities, as jobbing communities go, in North Dakota located on your line, but they are also located on and served by the Milwaukee and the Soo Line, and in one instance by the North Western; is that correct?

A. The only place of importance, of those that you have referred to, is Fargo, North Dakota. The others, the other points, are not jobbing towns.

Q. Would you say, Mr. Morrison, that Minot, Bismarck, Devils Lake and Oakes, North Dakota, are not important jobbing towns?

A. No, sir, I did not mean to infer that they are not. Perhaps I misunderstood your question. I thought you were referring to North Dakota towns that are reached by the Western Trunk Lines, the Milwaukee Railroad in particular.

Q. Well, all of those towns are served by railroads that are members of the Western Trunk Line Committee, are they not?

A. Yes.

Q. All of the towns that we have just named, that is?

A. Yes, sir, that is true, Mr. Williams, but many of these towns that you have named are on the Soo Line, and the Soo Line is a member of the Western Trunk Line Committee only because of its lines that are located in Wisconsin, Northern Michigan, and Northern Illinois,—typical West-[fol. 1108] ern Trunk Line Territory. Their rates, just as ours, west of Minneapolis and St. Paul, out into North Dakota, are not under the jurisdiction of the Western Trunk Line Committee.

Q. Now, Mr. Morrison, if you were moving a shipment, less than carload or carload, from Chicago to any of the points that I have named, it could be handled direct via the Milwaukee, the Soo Line, or the North Western to the respective stations served by those lines in North Dakota, could it not?

A. If could be if the shipper wanted to have it moved that way, yes, sir.

Q. All right. And those three railroads are not confronted with the difficult situation that you have testified concerning, with respect to the Twin Cities terminal situation, that you allege in the case of the Great Northern and Northern Pacific operation, are they?

A. That is correct, except that those railroads do have problems of their own in making interchange as between their own system—parts of their own system.

Q. Your principal Chicago connection is the Burlington, is it not?

A. No, sir. We happen to have a partial ownership in the Burlington, and that is one of our principal connections.

Q. The Great Northern also is a part-owner in the Burlington, is it not?

[fol. 1109] A. Yes.

Q. Now, Mr. Morrison, you have testified with respect to the first class rates being $1.65, prescribed by the Interstate Commerce Commission from Chicago, Illinois, to Fargo, North Dakota, in the Fargo Rate Case, 98 I. C. C. 691. Is that correct?

A. I did not testify about that rate in this hearing, no.

Q. Well you have mentioned here the Chicago-Fargo rate being $1.65. Can you say whether or not that was prescribed in the Fargo Rate Case?

A. I would say that it was, yes.

Q. Now is that the prevailing rate today? Do you know what the first class rate is from Chicago to Fargo, the going rate, the rate that the shippers pay?

A. I can give it to you, if you want me to look it up.

Q. Well if I told you, Mr. Morrison, that it is $2.10 per hundred pounds, would you say that was about correct?

A. I would say that it is pretty close to it.

Q. Now you made quite a point with respect to Steele, North Dakota. Steele, as I recall it, is about 50 miles east of Bismarck, is it not?

A. It is a little further than that east of Bismarck.

Q. About how much?

A. Well, let me see. It is 400 miles from St. Paul, Steele is; and Bismarck, as I recall it, is 445 miles.

[fol. 1110] Q. Well then, it is a little less than 50 miles.

A. Yes.

Q. Bismarck is where you compete with the Soo Line, is it not?

A. Yes.

Q. But at Steele you have the control of the rate structure—that is the Northern Pacific controls the rate structure at Steele, does it not?

A. Not this particular rate, no, sir. That was made for us by the Interstate Commerce Commission.

Q. The Commission prescribed the rate that you are using?

A. Yes.

Mr. Williams: That is all.

Chairman Aitchison: We will take a brief recess at this time.

(A short recess was taken.)

Chairman Aitchison: Shall we resume. Is there further cross examination of the witness?

Mr. Townsend: I have a question or two, if the Chairman please.

Chairman Aitchison: Mr. Townsend.

By Mr. Townsend:

Q. Mr. Morrison, is your testimony here today offered for the Northern Pacific Railway alone, or are you offering testimony for a group of railroads?

Chairman Aitchison: That is a question that should be [fol. 1111] directed to the counsel, Mr. Townsend.

Mr. Olson: The witness is appearing for all of the lines serving the state of North Dakota, and northern and western Minnesota.

By Mr. Townsend:

Q. You have voiced the opinion here that no change should be made in any of the class rates at this time, or at any time in the future,—is that correct?

A. Yes, sir,—having in mind the basic rates; I said that I did not think that any change should be made basically in the rates.

Q. Well now let us take a specific case. The lines that you represent would include the Soo Line, operating to Chicago, would they not?

A. Operating west from Minneapolis; not east to Chicago.

Q. But it does operate down to Chicago, does it not?

A. Yes.

Q. Now still taking the Soo Line, for example: It starts at Chicago, and it applies the Illinois Classification, and what we term the Eastern Class Rate Scale, until it gets into Wisconsin, and then it applies an interstate scale, which is the Western Classification Scale, the so-called Western

Trunk Line scale; and then when it gets across the line of Wisconsin it again reverts to the Official Classification Scale, the so-called 15879 Eastern Class Rate Scale, with [fol. 1112] different relations of the lower classes to the different applicable classifications, continuing through Wisconsin on intrastate as well as interstate traffic, and after it gets across the river, into Minnesota, it again gets on the interstate classification, and applies the Western Classification, with the Western Trunk Line rates, with their class relationship, and then that continues on further west. Now do you think that that is an ideal condition, or a proper condition, to continue?

Chairman Aitchison: Now, Mr. Townsend, are you assuming all that to be a fact, or are you asking the witness if it is a fact?

Mr. Townsend: Pardon me?

Chairman Aitchison: I asked you whether you are assuming that as a fact, or whether you are asking if it is a fact.

Mr. Townsend: Oh, those facts are all shown in the record here.

Chairman Aitchison: Well, possibly, and possibly not.

By Mr. Townsend:

Q. Then I will ask the witness this question, your Honor: Are you familiar with that fact, Mr. Morrison?

Chairman Aitchison: As stated by Mr. Townsend.

A. No, sir, I am not familiar with all of the details that you have outlined in that question,—or that statement.

[fol. 1113] By Mr. Townsend:

Q. Do you know what basis of rates is applied locally within the state of Wisconsin?

A. Intrastate?

Q. Yes.

A. No, sir, I do not. I have forgotten. We have very little mileage in Wisconsin.

Q. But you do maintain joint rates with other lines in Wisconsin, through Superior, do you not?

A. Yes, sir, that is correct, and those rates are on the 17000 Part-2 basis.

Q. If they are intrastate rates, they are not on the 17000, Part-2 scale, are they?

A. Oh, no. I thought that you were referring to the rates from Wisconsin on our own railroad, west.

Q. No. As far as the intrastate rates in Wisconsin are concerned, do you know what scale of rates applies?

A. I have not looked it up.

Q. Do you think that the so-called 17000 Part-2 scale applies?

A. I would hope so.

Q. You would hope so.

A. Yes.

Q. Well of course the record will show differently. Now then, coming from your territory, coming eastbound from North Dakota, for example, to New York, say, you now [fol. 1114] apply the Official Classification, do you not?

A. Yes.

Q. And that was prescribed in the 17000 Part-2 case?

A. Yes.

Q. Westbound, to the same territory, what classification do you apply?

A. The Western Classification, except for the Twin Cities, and certain points in eastern Minnesota.

Q. Assume then, that you have a commodity rate of fifth class, or a commodity rate of fourth class, on shipments moving from Minot, North Dakota, to New York. Have you attempted to justify the difference of, say, five per cent on fourth class, and two and a half per cent on fifth class, eastbound, as compared with the westbound rates from New York to Minot?

A. Why, Mr. Townsend, it is all a part of the rate adjustment.

Mr. Townsend: I understand.

A. The classification is a part of the rate structure.

By Mr. Townsend:

Q. Yes, but do you think it is a good idea to have such a disparity between the rates, one way and the other, and do you want that to continue for the future?

A. We are not suggesting any change in the present rates.

Q. Now you have left the impression here that in the state [fol. 1115] of Minnesota your rates are those prescribed in the 17000 Part-2 case, the Western Trunk Line Class Rate case.

A. They are, Mr. Townsend, except as we have had to make lower rates to meet truck competition. However, if you are speaking now of intrastate traffic, that is another question.

Q. Are not the class rates for the first four classes which you apply in the state of Minnesota, in recognized Zone 2 territory, applied in that territory on intrastate traffic rates that were prescribed by the Minnesota Railroad & Warehouse Commission?

A. Well, the Minnesota Railroad & Warehouse Commission, as I remember it, Mr. Townsend, required the whole state of Minnesota to be put in Zone 1. That is, the Zone 1 rates were applied.

Q. Do you mean, as to the first four classes?

A. Yes.

Q. So that they were not truck competitive, rates, then; but they were prescribed by the Commission, were they not?

A. Yes.

Q. And you have accepted them over a period of years, some 10 years or more, without any objection, have you not? There has been no 13th Section proceeding, has there?

A. Well, as I remember it, such a proceeding was started at one time, but then withdrawn.

[fols. 1116-1117] Q. That was the one that they started in North Dakota. Now coming down into the corner of Iowa, where the Great Northern Railroad operates: Is the same scale of rates in Iowa there applied intrastate, as the Interstate Commerce Commission has prescribed?

A. Well I have not attempted here to testify with respect to Western Trunk Line Territory, and the corner of Iowa to which you have referred is a part of Western Trunk Line Territory.

Q. Well you testified as to the Great Northern Railway, as I understand it, and that is in their territory.

A. Only as to this particular area, where the principal lines of the Great Northern lie in Minnesota and North Dakota.

Q. Very well. Now you spoke about the dire conditions resulting, following the prescription of the overhead class rates from the East to North Dakota, for example. Who was the greatest sufferer, by reason of that action; was it you, or was it the Minneapolis market?

A. Well it certainly was the railroad companies, but to some extent it was the Minneapolis-St. Paul market also.

Q. But you did recoup your losses by building up certain of the communities, like Fargo, North Dakota, through the medium of your rates, did you not?

A. I question that.

Q. Well you did build up a big community there, that [fol. 1118] prospered for years after the through rates were put in, did you not?

Mr. Olson: I object to the question as argumentative, if the Chairman please.

Mr. Townsend: I am merely trying to find out what the witness knows about it.

By Mr. Townsend:

Q. Have you noticed any increase in your tonnage into Fargo in the last few years?

A. Well, there was quite a period when there was a decrease, during the depression years, along about 1930, for four or five years. It has had its ups and downs.

Q. Has there ever been a year when the merchandise products that are warehoused and jobbed, and distributed, throughout all of the territory, Chicago and East, have not increased into Fargo, year after year, since those rates were put in?

A. I would not be able to tell you, without looking up our records.

Q. Now, Mr. Morrison, I want to ask you with respect to the general policy of this group of railroads that you have spoken of. I have found that in some instances they have been willing to cooperate and make rates from Minnesota into eastern territory on a basis comparable with the destination scale of rates, and in other instances they were not willing to do that. You maintain those rates, and are [fol. 1119] parties to the proceedings that result in those rates. Now can you suggest why one class of rates is treated differently than is another class of rates?

A. Are you speaking now of commodity rates?

Q. Commodity rates or rates adjusted at a percentage of the class rates.

A. Well, to the extent that our rates are outside the scope of the rates prescribed in 17000 Part-2, and in other orders of the Commission, we approach the question of making any change in our present rates from the standpoint of what the conditions may warrant. Now, obviously the shippers

and their representatives, like yourself, on the one hand, and the carriers on the other hand, are not always in agreement as to the changes that ou-t to be made. However, we try to be fair in all of these matters so far as our own railroads is concerned.

Q. Well, is there any defined policy that you can refer to? For example, would you treat our national resources, the products that are produced in Minnesota, any differently than you would a manufactured product, that we wanted to manufacture in Minnesota?

A. You are asking me?

Q. Certainly. You are the witness.

A. Well, I do not have any defined policy with respect to changing rates, on the Northern Pacific, except, as I stated [fol. 1120] before, that we try to be fair, businesslike, and intelligent.

Q. Now you spoke about the rail-lake-and-rail rates. You take the so-called laminated scale of rates, and progress that from New York clear to the western boundaries of North Dakota, do you not?

A. In the case of New York, rates were specifically prescribed.

Q. Made on the same laminated scale; is that correct?

A. I presume so. There were key points specifically listed.

Q. Well take any point in New York that is not a key point. You take and progress the laminated scale out into North Dakota, do you not?

A. That is true from certain parts of the territory east of Chicago, but all of the rates from Eastern Trunk Line Territory into our area are made according to the formula that was laid down in 17000 Part-2.

Q. And that formula was the application of the so-called laminated scale, using the several different scales prescribed for local application, was it not?

A. Well it has been some years, Mr. Townsend, since I closely examined the technical features of the 17000 Part-2 order, but as I remember it at the moment, the rates from the entire territory east, from the whole state of New York, for instance, were made on a somewhat different technical [fol. 1121] formula than the rates from Chicago.

Q. And as far as the progression of the scale west of Chicago is concerned, or the progression of those rates west of some gateway to the East, they are based upon the Zone-1, 2 and 3 scales, are they not?

A. In general, yes.

Q. Yes. Now then, I want to ask you this, Mr. Morrison: Assuming that we find some fair basis for equating the water haul from Duluth to Buffalo with the rail line haul, would you be willing to join in the extension of those scales through Buffalo and Duluth to your territory, extending the scales through in that manner?

A. I do not know.

Q. You do not know?

A. No, sir. That would depend upon a lot of things.

Q. Now you stated that the use of the Official Classification is due to the rail-lake-and-rail influence.

A. Yes, sir.

Q. But as far back as you can remember, it was actually applied to Minneapolis until the first decision in the Western Trunk Line Class Rate case, was it not?

A. Are you speaking about all-rail, or lake-and-rail?

Q. All-rail.

A. Yes, sir. As far back as 45 years ago, all-rail rates were put in—proportional rates were put in from Sault Ste. [fol. 1122] Marie to Minneapolis and St. Paul, which were subject to the Official Classification, but which were, however, tied in with the rates from the East to 100 per cent territory.

Q. Well, going back for a great many years, the Official Classification, from all of Official Classification Territory to Minneapolis and Duluth, applied for a great many years, did it not?

A. I think you are right about that, yes.

Q. And then there was a change in the first decision, which applied the Western Classification, and then that was corrected in the next decision in the Western Trunk Line Class Rate Investigation, and the Official Classification was applied both eastbound and westbound between the so-called Twin Cities—Duluth Territory, and Official Classification Territory; that is correct, is it not?

A. I think that is right.

Q. Now have you ever had occasion to investigate to see whether or not that was a beneficial situation, with respect to uncertainty as to the classification that applied, where we had that application the first few years after December 3, 1931?

A. I have not made such an investigation. I am not sure that I understand your question.

Q. Well then, let me ask you this question, as a rate ex-
[fol. 1123] pert, Mr. Morrison: Assuming that it is a desirable thing to have the Official Classification apply between——

Chairman Aitchison: Now just a moment, Mr. Townsend. You are talking so fast that I cannot possibly understand what you are saying, and I do not think the witness can either.

Mr. Townsend: I am sorry.

By Mr. Townsend:

Q. Assuming that it is a desirable thing to have the Official Classification apply between the Twin Cities and New York, for example, as representing the Official Territory, do you not think that it would be also a desirable thing to apply the Official Classification scale of rates, that is, the so-called Eastern Scale of Rates?

A. No, sir, I do not. You got the Official Classification originally because of carrier competition.

Q. Well then, would you think then that it is a desirable thing to apply the Official Classification scale of rates locally in the state of Wisconsin, and locally in the state of Illinois, and not apply it when you get west of the Mississippi River at Minneapolis, or east of the Mississippi River, at Minneapolis?

A. Well, I would not w nt to see it applied in any of those districts.

Q. You would not.

[fol. 1124] A. (Continuing) Subject to the qualification that there might be a reason for applying it in Illinois and not in Minnesota.

Q. I assume that your investigations were for the purpose of remedying the growing inequalities in rates, where it was very apparent, even to a casual observation, that there was something wrong. Has there been any offer of any suggestion made by the carriers, or any effort on their part to iron out some of these things that have been complained of continually.

A. Why, Mr. Townsend, when the 17000 Part-2 rates were ordered into effect in the territory, after all of the investigations, and the rehearings, and so forth, which resulted in the 1935 order, we assumed that we were going to have a basis of rates that would endure for a long period of time;

that they would not be subject to change, every year or so; and that if they were changed, they would not be changed basically, at any rate. We just reconciled ourselves to those new rates, and in a sense, we breathed a sigh of relief, because we thought then that the complaints that had been made from time to time were a thing of the past.

Q. Well then, you would say, would you, that you would rather bear the ills, whatever they were, that were attendant on that situation, than to take any steps to iron them [fol. 1125] out?

A. No, sir, I would not go that far.

Mr. Townsend: Thank you.

Chairman Aitchison: Is there further cross-examination of the witness?

Mr. A. L. Reed: Yes, Mr. Chairman.

Chairman Aitchison: Mr. Reed.

By Mr. A. L. Reed:

Q. Mr. Morrison, you gave some figures in the record with respect to less than carload tonnage and the over-all tonnage, I believe, of the Great Northern Railway, for a certain period of years. I would like to know first if the figures which you gave were the tons originated, or just what were they?

A. That was for the Northern Pacific, and not the Great Northern.

Q. For the Northern Pacific, then.

A. The figures that I gave included both of those, or all of the traffic that we handled, whether we terminated, or originated it, or operated as a bridge line.

Q. It was tons carried, then.

A. Tons handled.

Q. Or, tons handled.

A. Yes.

Q. Do you have published, for the account of your line, in the territory served by you, the so-called stopover [fol. 1126] privileges, to partially load and partially unload?

A. On some commodities, yes, sir.

Q. To what extent have those privileges been published, beginning with about 1930?

A. We had them in effect, as to some commodities, before 1930. There have been some additions, I believe, in the

last 10 or 12 years, to the list of commodities which may be stopped to partly unload, at a charge for the stop, in addition to the application of the through rate.

Q. What is your judgment as to whether or not such privileges would have some bearing on whether or not freight would move in less than carload or carload service?

A. That depends on the circumstances. We have been confronted with the argument in the last few years that stopping in transit at the carload rate would divert traffic back to the railroads which have been lost to the trucks. I think that has had quite an influence,—as a matter of fact, I know that it has, in some cases,—in leading to the extension of such privilege.

Q. In such instances the traffic attracted to the rails would be principally less than carload traffic, would it not?

A. No, sir, not necessarily. The argument is made that the communities along our line are too small to receive in every case a carload of their own, and that we can build up [fol. 1127] business in those communities by permitting two or more receivers to join together and buy a carload of freight. That is, freight that would not otherwise move by railroad, at least; that, if it did move, might move by truck.

Q. Well in those instances where the stopover privilege has resulted in the accumulation of small lots into a carload, in order to accommodate the situation that you have just mentioned, the freight would obviously be less than carload freight that was consolidated into the carload lot, would it not?

A. It would be less than carload freight if it were shipped as such, or if some of it was shipped as such, were it not for this stopping-in-transit provision on carload shipments.

Q. To what extent have you published all-commodity freight rates since 1930? Have they not been developed primarily since that date on your line?

A. Since what date?

Q. About 1930.

A. Why, yes, sir. As I indicated on direct, we have been forced to publish quite a few such rates by the previous action of the trucks, common carrier trucks and private trucks.

Q. Do you know whether or not the rails or the trucks first published the all-commodity items?

A. Referring to our territory?

[fol. 1128] Q. Yes.

A. Oh, unquestionably it was the trucks. I do not know of any instance when the railroads, in the old days, before they had truck competition, published what we now describe as all-commodity rates, or mixed carload rates.

Q. Could you give us reference to any truck publication, publishing on truckload lots an all-freight item prior to the publication of such item by the rail lines?

A. Well, I cannot do that just at the moment here, no, sir, but I could give you, if I were elsewhere, reference to the acts by trucking companies resulting in volume rates—what we call volume rates. Now when you speak about tariffs, some of the situations that we had to deal with arose prior to the time when the truck lines were required to publish traiffs. Now I assure you that we have not conscientiously gone any further than what we felt would be necessary, in making these rates; that is, we have not given the shipper something for nothing if we could held it. The effort always was simply to meet our competition as we found it, and in the form in which we found it.

Q. Would you say that the truck volume rate is identical with the so-called all-commodity freight item of the railroads?

A. No.

Q. Did you have in mind, in saying that you published [fol. 1129] the all-freight item to meet truck competition, the idea of meeting motor truck volume rates without regard to whether or not they applied on all-freight items?

A. Well, in both ways,—if I understand your question correctly. Many of those rates antedated the time when it was required that truck tariffs be published. I can recall certain rates that were put in, in a broad, general way, to overcome truck competition.

Q. Beginning with April of 1936, is it not a fact that your principal all-freight items have been published since that time?

A. Well, I do not think that that is true in our territory, no, sir. However, I do not know what the situation is in the South and Southwest.

Q. Do you know whether or not it is true in your territory?

A. I just stated, I do not believe that it is true in our territory, no, sir. I cannot be any more definite than that.

Q. Will you agree that the all-freight items were published primarily as a means of meeting motor carrier less than truckload rates?

A. No, sir.

Q. Will you agree that they were published primarily to meet motor truck volume rates?

A. No, sir, I wouldn't be able to even agree to that. I [fol. 1130] would say that they were published to meet truck competition, sometimes as to volume rates, and again, as to less than carload volume rates.

By Chairman Aitchison:

Q. When you refer to "truck competition," do you mean to include private trucks?

A. Yes, I do.

By Mr. Reed:

Q. Do you include also contract carrier trucks?

A. I include every form of truck competition, yes, sir.

Q. You had private carrier competition and contract carrier competition, truck competition prior, to 1936, did you not?

A. Yes.

Q. Do you have any comparable figures with the ones that you gave, showing less than carload and over-all tonnage, that would reflect the movement of freight via your line moving under the stopover privilege, and under the all-commodity items?

A. No, sir, I have not. That would require a special study, which has not been made.

Q. Are you in a position at this time to say how much of your less than carload freight has been diverted to a carload movement under the stopover privilege, and under the all-commodity items?

A. No, sir.

Mr. Reed: Thank you.

[fol. 1131] Chairman Aitchison: Mr. Smelker.

By Mr. Smelker:

Q. I have just one or two questions to ask you, Mr. Morrison. Can you state at least approximately what your present system average costs are for pickup and

delivery when such service is performed for you under contract by independent trucking companies?

A. No, sir, I cannot.

Q. You do not know the range, or anything about those costs?

A. No, sir, I do not. The situation is changing very rapidly at the present time. Originally we were hopeful that we could get the service performed for about $1 per ton on each end, but we were disappointed in that, because in some cases we had to pay more than that; but I am not sure, in any case, the we paid less than that.

Q. In no case was it less than $1 per ton?

A. Pardon me?

Q. I say, in no case did you pay less than $1 per ton?

A. I do not think so.

Q. And in most cases, more?

A. Not in most cases more, no, sir. Of course you are referring now to something that happened five years ago; but we tried to make contracts as low as possible, naturally, and that figure of $1 per ton was one that some of the railroads thought at the time might be uniformly worked out, or at least in a fairly uniform manner; but each [fol. 1132] railroad had to do the best it could, and made the best terms that were possible under the circumstances.

Mr. Smelker: That is all.

Chairman Aitchison: Is there any further cross examination of the witness? (No response.) Have you any redirect, Mr. Olson?

Mr. Olson: Nothing further.

Chairman Aitchison: You are excused, sir.

(Witness excused.)

Mr. Hughes: Call Mr. Glenn F. Vivian, for the Western Railroads.

GLENN F. VIVIAN was sworn and testified as follows:

Direct examination.

By Mr. Hughes:

Q. Mr. Vivian, will you please give your full name, address, and occupation.

A. Glenn F. Vivian; manager, Statistical Bureau, Western Lines; Chicago, Illinois.

Q. How long have you held that position?

A. Five years.

Mr. Hughes: If the Chairman please, I take it that it is hardly necessary to go into any detail as to Mr. Vivian's qualifications.

Chairman Aitchison: Is there any challenge of them at all? (No response.) Hearing none, you may dispense [fol. 1133] with that.

By Mr. Hughes:

Q. Mr. Vivian, have you prepared an exhibit containing a number of subjects pertinent to the issues in this case?

A. I have.

Mr. Hughes: May we have the exhibit identified, your Honor.

Chairman Aitchison: No. 66.

(Exhibit No. 66, Witness Vivian, marked for identification.)

Mr. Hughes: Now, from this point on, if the Chairman please, the statement of the witness, which has been generally distributed, is more or less of a page-by-page exposition of the exhibit itself, and with your permission, I think it may just be put into the record, without taking the time to read it.

Chairman Aitchison: Has there been a general distribution of it?

Mr. Hughes: Yes.

Chairman Aitchison: Have the parties had an opportunity to look it over?

Mr. Hughes: It was distributed yesterday, your Honor.

Chairman Aitchison: Is there any objection to the document going into the record, in that way? (No response.) Would you rather have it put into the transcript, or would [fol. 1134] you prefer to put it in simply as if it were a deposition, or as an exhibit?

Mr. Hughes: I will leave that to your own judgment, Mr. Chairman. As I stated before, it is a page-by-page exposition of the exhibit, and it may be helpful in follow-

ing the exhibit page-by-page. I have no particular choice in the matter.

Chairman Aitchison: Very well.

Mr. Reed: We have no objection to its being introduced in the manner described, your Honor, but we would like the privilege of examining the exhibit for the purpose of cross examining Mr. Vivian. In other words, we would like to postpone the cross examination temporarily.

Mr. Hughes: That is perfectly satisfactory, as far as I am concerned.

Chairman Aitchison: We will put it into the record, then, as Exhibit No. 67. There being no objection, it is received.

(Exhibit No. 67, Witness Vivian, received in evidence.)

Mr. Hughes: May I inquire, your Honor, if there are any parties who desire to cross examine Mr. Vivian at this time?

Chairman Aitchison: Does anyone desire to cross-examine Mr. Vivian now? (No response.) You may stand [fol. 1135] aside.

(Witness excused.)

Mr. Hughes: The next witness for the Western Carriers will be Mr. R. C. Fyfe.

R. C. Fyfe was sworn and testified as follows:

Direct examination.

By Mr. Hughes:

Q. Mr. Fyfe, will you please give your name, address and occupation.

[fol. 1136] A. R. C. Fyfe; Union Station Building, Chicago, Illinois; Chairman, Western Classification Committee; 54 years in the railroad business, and 34 years on classification work.

Q. I have in my hand, Mr. Fyfe, a very large exhibit of which you have a copy before you. Will you describe briefly what that exhibit is. Since it is the largest you have, it may be easily identified by all of the parties.

A. This exhibit consists of 45 pages, and contains 800 changes in the classification, made, starting in December of 1930 and ranging back to June of 1928, showing each item as it appeared in the classification prior to the change; or, if it was a new item, it is shown in the column to the left as not specifically proxided for. To the right are shown the weight per cubic foot and the value per pound. This is the statement which was called for by the Commission.

Q. Is this statement true and correct, to the best of your knowledge and belief?

A. I personally made the statement, and it is, yes, sir.

Mr. Hughes: At this time, if the Commission please, Exhibit 68 is offered for identification.

(Exhibit 68, Witness Fyfe, marked for identification.)

Mr. Hughes: I should explain, if your Honor please, that there are two other documents that have been distributed that are headed "Exhibit", but which are, as a matter of fact, testimony. One also bears the heading "Testimony [fol. 1137] of R. C. Fyfe; answer to Question 10"; and the other has no main heading, but starts with "Mr. Jensen." As I say, they are really testimony, and have therefore been erroneously designated as exhibits.

Mr. Bee: Are there three of them, did you say, counsel?

Mr. Hughes: No. There is only one exhibit, which is headed "Reference to decisions dealing with classification elements."

By Mr. Hughes:

Q. Now, Mr. Fyfe, will you please proceed with your testimony, starting with the sheet that mentions Mr. Jensen's name in the first line thereof.

A. On page 14 of Mr. Jensen's testimony——

Q. Pardon me, Mr. Fyfe. You refer to Jensen's Exhibit No. 7 in this proceeding, do you not?

A. Yes, sir.

Q. Continue.

A. —we find this: "It is impossible either to unify the Official Classification with the Southern or Western Classification, or to devise interterritorial class rates . . . which will produce a reasonable result, or hardly even a tolerable result." My answer to that is that in the past 20 years efforts have been made to meet the Commission's desire for

uniformity. Today greater uniformity exists than ever, but as to the West, it has resulted in serious losses in revenue [fol. 1138] and further uniformity in my opinion can only be accomplished by further losses which must be made up by advances on commodities produced in the West.

By Chairman Aitchison:

Q. I do not understand, Mr. Fyfe, from your statement, whether you are taking exception to Mr. Jensen's statement there, or agreeing with it.

A. Well, I am not taking any exception to it, no, sir. As a matter of fact, in a measure, I am agreeing with it.

Q. Please continue.

A. On page 17 Mr. Jensen refers to ratings in the Western Classification as compared with Official. We do not agree with that statement. Shippers only want uniformity when the revision is downward and oppose uniformity by advances.

Ratings third class and higher are practically uniform except where as in the case of furniture in carloads the Commission undoubtedly realizing the low earnings per car prescribed second class carload minimum weight 12,000 pounds in Official territory and third class (Column 70) in the West and in other cases prescribed second class in Official territory 10,000 pounds and Column 7½ in the West.

Q. Was that done in the 17000 proceeding?

A. No, sir. That was done in the General Investigation Case.

Q. Well, that was 17000.

A. The General Furniture Investigation.

Q. That was Docket 17000, was it not?

A. I do not remember the docket number.

[fol. 1139] Q. The part applying to furniture.

A. Yes. It was the General Furniture Investigation.

Q. Well, that was the 17000 proceeding. Now that was true for some time, was it not—your getting classes 1, 2 and 3 together in the three territories?

A. That is true. Now while we arbitrarily, without public hearing, acting under instructions of the Executive Committees of the three territories, unified the first, second and third class ratings, and ratings higher than first class, that resulted in over 700 reductions in Western territory. Following that uniformity in all three territories, the exceptions in the Southeast were made, some 3200 of them, which

proceeded to destroy, in large measure, the uniformity, third class and higher, that we had accomplished, and resulted in a serious loss of revenue, so far as the West was concerned. Now, as to the important classes 4, 5 and A in the Western Classification. There are 1804 less than carload ratings f arth class, or 55% in the West. Of this number only 607 are rated R26 in Eastern territory, or 55% of first class. There are 176 that are higher than the West, and 987 items in the East that are rated fourth class, or 50%, 5% less than the Western group, and 33 are rated Column 40 in the East, which are rated 55 in the West.

Q. What is the percentage in the East?

A. 50%—fourth class. This is pointed out in answer to [fol. 1140] Mr. Jensen's statement, in connection with his formula that the reductions that might be made in the lower classes in the Western Classification would be offset by increasing the Classification to the Official basis. Under fourth class, in Western territory, a large volume of goods moves from jobbing points largely for what might be termed as short distances; and to establish the Official ratings would mean a serious loss in revenue, both to the rail carriers and the motor carriers,—and in this proceeding I am speaking for the motor carriers in Western territory that I represent.

Mr. Hughes: Well, they are not involved in this proceeding, Mr. Fyfe.

The Witness: I understand that, but it would affect their revenue also.

Now as to the Western carload ratings of fourth class, which number 2326: In this group the Official ratings are—first class, 2; third class, 31; Column 65, 1; Column 60, 2; R26, 1253; fourth class, 982; Column 45, 8; Column 40, 4; Column 37½, 8; and Column 35, 6. Here we find, under R26, 1253 out of 2326 items rated alike, both East and West, with their percentage relation 55. In the East they have also rated fourth class, or Column 5, as compared with the West, 55, 982 items.

Class A in the West is an important carload rating in [fol. 1141] this group, and moves machinery of all kinds—Contractors' Outfits, Electrical Machinery, and so forth. Machinery in the Official Classification is largely classified Column 40 or lower. An effort was made to get the Official Classification rating up from fifth class to Column 45, but

was unsuccessful, and Column 40 was established. Column 45, was the Western basis, and the increase would have been from 35 to 45, but as I say, it was unsuccessful, and they were only able to get the rating up to Column 40.

By Mr. Hughes:

Q. Let me interrupt you right there, Mr. Fyfe. When you say "they were only able to get the rating up to Column 40", what do you mean by that? Do you mean that the Commission would permit only Column 40?

A. No, sir. I mean that the pressure from the shipping public, and the machinery manufacturers in Eastern territory was so strong that they could not get by with Column 45, and they did not want to fight it out, and litigate it, as had been done with many other items in the machinery list.

Q. Proceed.

A. To make the rating uniform, and save carriers' revenues, it could only be done by advancing the Official Classification. The West has repeatedly justified Class A ratings on Machinery, and numerous items in the Class A group. If the Official Classification basis were applied, with a lower rate scale, what could we advance other than Agricultural [fol. 1142] Products, Livestock, Lumber and other materials produced in the West?

By Chairman Aitchison:

Q. Lumber does not take the classification, does it?

A. No, sir, it does not, but I say, if we lose by reducing these high-class commodities, we have got to recover some of our money some place, and we have got to recover it out of the materials that we produce in the West, the raw materials primarily. Of fifth class in the West, there are 2697 carload ratings—37½, Rocky Mountains and East. In this group the Official Classification ratings are: Third class, on six items; second class, R26, 2; 28 in the group that are rated Column 50; 2, Column 45; 77, Column 40—and that reflects largely the increase that was made in the Machinery; 631, Column 37½—the same as the West; 1847 rated fifth class or Column 35, 2½ higher than the West; 21, Column 30; 78, sixth class, 27½, or 7½ higher than the West; and 3, Column 25. In Class B in the West, Column 32½, we have 295, on the carload rating. Of this group, 138 are rated higher than the West; 6 the same as in the West; and

150 are lower than 32, the Western basis. In Class C in the West, we have 367 carload ratings; and in the Official, in this group 230 are classified lower than the West.

Q. Let us have the percentages there, please, Mr. Fyfe.

A. Class 30 in the West, east of the Rocky Mountains; and [fol. 1143] in the East, 230 are, generally speaking, Column 27½, and in a few instances, Column 25.

Q. Now you have quite a difference between the Western Classification percentage ratings, west of the Rocky Mountains, and east, have you not?

A. Yes.

Q. Taking this grouping that you have here, with respect to Classes 1, 2 and 3: As I understand it, the percentages are the same, 100, 85 and 70, on the first three classes.

A. For the far West?

Q. Both.

A. No; 100, 90, and 80.

Q. Since when?

A. Just a moment. No, I believe you are correct on that — and fourth class is 60, versus 55.

Q. 100, 85 and 70, on first, second and third.

A. And fourth is 60, versus 55.

Q. And fifth and A, are both 50.

A. In the West, yes.

Q. As contrasted with—what?

A. 45, and 37½.

Q. East of the Mountains?

A. Yes.

Q. And Class B, is 40?

A. I am not sure about the lower classes, Mr. Chairman, [fol. 1144] except that when you get down to Class E, it is 17½ East, and 20 out in far Western territory.

Q. Class B is 40. C, is 30.

A. Yes.

Q. D, 25.

A. Yes.

Q. And E, is 20.

A. Yes.

Q. So that on B, you have 32½ east of the Rockies and 40 west; and on C you have—what is your percentage in the portion east of the Rockies?

A. 30%.

Q. As contrasted with 30.

A. Yes.

Q. The same.

A. Yes.

Q. Now how about D and E? You do not show those in the statement at all.

A. No.

Q. Why did you omit them?

A. Because I had practically nothing in Eastern territory, except Column 27½, and I did not put them in, because practically everything that we have in D and E is moving on exceptions in the East.

Q. How about it in your own territory?

[fol. 1145] A. A great portion of it is also moving on exceptions there, made to meet specific conditions; and I do not think, Mr. Chairman, that you can ever get classes in the classification that will remove that situation.

Q. Well now, are you having any difficulty because of this rather marked difference in the relation of the classes from 4 down to C?

A. No.

Q. Why not?

A. I do not know. We have not had any complaint. It may be because the boys have been taken care of under the class rate adjustment; as a matter of fact that has been done in a good many cases, by the Commission.

Q. In the fixation either of a scale itself, or exceptions to the scale.

A. Yes.

Q. In other words, then, it is your deliberate judgment, is it, Mr. Fyfe, that that difference does not cause any particular disadvantage to the territory west of the mountains?

A. That is true.

Q. At least not enough so that there has been complaint about it, as you say?

A. That is true. Taking the recent readjustment that the Commission made in the California rates, they have a [fol. 1146] comparatively low first class rate for a considerable distance.

Q. What commission are you talking about now, with respect to the recent readjustment made in the California rates?

A. I mean, the California Commission,—the readjustment that they made, where they made the scale for both the rails and the motor carriers, and applied the Western classification over both modes of transportation.

Q. That was intrastate?

A. Yes.

Q. In California.

A. Yes, sir.

Q. Now, let me ask you this question right here, on which you may have an opinion, or you may not. When we come to make a class scale, do you think that it would be better for us to start at, say, 4th, and grade each way?

A. I think that is the way that the California scale was made, Mr. Chairman, and perhaps we could improve on it if we started at 4th and built up from there.

Q. Up and down.

A. Yes.

Q. From 4th.

A. Yes.

Q. Is that the rating which moves the bulk of the traffic in your territory?

A. 4th class moves the very heavy local tonnage. I have [fol. 1147] not ridden on any freight trains in 20 years, but from my observation in years past, from past experience, I know that a large part of the less than carload tonnage consists of foodstuffs, feedstuffs, iron and steel, wire and nails, and those are commodities that move out of the jobbing centers to the smaller towns, for relatively short distances. Those commodities do not move long distances, except in the case of a few specialty items, that are widely advertised, and they largely move to distribution points in carload lots, and are then fanned out from those points less than carload, for distances from about 100 miles to 150 miles. But the great bulk of the tonnage is in the commodities classified 3rd class, and 4th class. Of course, under the exceptions, at the present time, there is a different situation, I will admit that; and I am going to deal with some of these exceptions in a few moments.

Q. The comparison which you have made here, with respect to the result of putting the portion of Western classification territory east of the mountains, on the Official basis, would be much more unfavorable if you were to give consideration to putting the portion of Western Classification territory west of the mountains, on that basis, would it not?

A. Well, I think, Mr. Chairman, if you were to put the territory west of the mountains on the same percentage

relationship basis as applies east of the mountains, it would [fol. 1148] be a desirable thing to do, but I think, if that were done, that it would require a complete revision of the class rates in that particular territory.

Q. Yes, but what I mean is, assuming that there is no change in the class rates. Then if the matter were to be adjusted by going to the Official classes, translating them, as you say Mr. Jensen suggested, obviously there would be a different result than you have with these ratings here.

A. Oh. Well, that would be absolutely ruinous to us, Mr. Chairman. For instance, Salt Lake City, Ogden, all of the coast cities, and Reno, are large jobbing centers. They move out of there iron and steel, the entire grocery line, and articles that are rated 4th class. Now if you drop the 4th class rating from 60 to 50, it is going to mean a tremendous reduction in earnings to the carriers in the traffic that moves in large volume. Therefore I would qualify my statement, that while it would be desirable to put a uniform relationship in throughout the West, it is going to require an upward revision in some of the class rates in the territory, if you apply a lower percentage relationship than 4th class to the present relationship.

Q. Well now, take your Class 5 that you mention at the top of page 2, where you refer to Class 5 in the West.

A. Yes.

Q. There are 2698 carload ratings, 37½, east of the [fol. 1149] Rocky Mountains, as against 50 west.

A. That is true.

Q. You say "In this group the Official ratings are 3rd class, 6; 2nd class, R26, 2; and 28, Class 50."

A. Yes.

Q. To go, then, to the Official ratings would make a reduction in the classification on everything which follows in the last two paragraphs there, would it not?

A. Yes, sir, that is true, but you would not move any traffic that is moving at Column 50 in that territory today, Mr. Chairman, at any rating of 2nd class, or Column 70. Now in that particular territory the big movement on 5th class and Class A, which are the same, is the machinery group, upon which I know of no commodity rates.

Q. You say, 5th class and Class A——

A. 5th class and A_2 which are alike today.

Q. Yes?

A. Now, the big movement of items on those two classes in that territory consist- of agricultural implements and machinery.

Q. That is, on A.

A. On A, out in that territory.

Q. Yes.

A. But on account of the depressed condition of agriculture, in Docket 17000 the Commission, as you will recollect, [fol. 1150] made Column 40 on agricultural implements in Western Trunk Line and Southwestern territories; so agricultural implements east of the Rocky Mountains are on Column 40, and west of the mountains they are on Column 50, and I know of no carload commodity rates on them.

Q. East of the mountains Class B, and west, Class A?

A. Or 5th.

Q. Or 5th Class.

A. I believe they are both the same; Class A and 5th Class are the same.

Q. You remember, from your own long experience, times and places when Class A was a higher rating than 5th Class, do you not?

A. Yes, sir, and I also remember when it was rated lower than 5th Class, in some parts of the territory.

Q. It has been both ways, in different parts of the territory?

A. Yes, sir. Now on pages 31 and 32, Witness Jensen refers to the great number of exceptions to the classification which have been published. I anticipate that on cross examination the representatives of the State Commissions will bring up that question, and ask why the exceptions are not included in the classification. I want to say that few of these exceptions are warranted. The large volume of them were made, so it is alleged, to meet [fol. 1151] motor truck competition, freight forwarder competition, or the threat of shippers putting their own trucks on the road if the rates were not reduced. The drug and chemical exceptions are a good example.

Q. I do not think, Mr. Fyfe, that you need to go into that topic here.

A. I do not understand.

Q. I say, do not bother to read a quotation from Mr. Jensen. Just make your own comment.

A. That is what I am going to do, Mr. Chairman. Here we find anti-freezing compounds used in automobiles,

grouped with Essential Oils, Vanilla Beans, Gas Black, and hundreds of other items, regardless of weight, value or risk. Essential Oils, for example, with a very high value and a limited movement, are rated the same as Bicarbonate of Soda. In 63 ICC 147 the Commission found that on Peppermint Oil, one of the heavier moving essential oils, rated 1½ in cans, in boxes, in bulk in barrels, 1st class was not unreasonable. The average price of Peppermint Oil, at the time that case was decided, was $3.30 per pound. The price in July, 1942, ranged from $5.50 to $6.25 per pound. A few of the other oils which move in volume, comparatively speaking, referring to the high-priced oils, are: Oil of Orange, $1.75 to $3.25 per pound; Oil of Lemon, the California product being the lowest in price, $3.25 per pound; Oil of [fol. 1152] Ginger, $20.00 per pound; Juniper Berry Oil, statement reads: "Lubricating Oil", but it should read "Castor Oil, in bulk and barrels", which is rated 3rd Class. The fellow who made these exceptions ought to have had to drink the castor oil. Vanilla Beans are another example. Prior to the last war, Vanilla Beans were worth in the neighborhood of $5.00 to $7.00 per pound, and our rating was double 1st class. After the war, World War No. 1, the price got down to from $2.50 to $4.00 per pound. On petition of the handlers, the extract people, we reduced the rating to 1½. Today Vanilla Beans are worth $14.00 to $16.00 per pound, and they are moving at the same rating, by exception, as Iron and Steel Hardware.

Q. Is that because of the sources of supply having been largely taken over by our Japanese enemies?

A. Not entirely, no, sir. There are other sources of supply, Africa, Spain and Mexico. At the present time we are getting practically all of our beans out of Mexico. Now we have another list, and that is the Hardware List, and under exceptions we find Cutlery, Electric or Pneumatic Tools, grouped with Horse Collars, Lamp Chimneys, Road Grader Disks, Rules and Rulers, lightweight and heavy-loading commodities regardless of value or weight, all rated 3rd Class.

In the same group we find Milk or Cream Aerating Cans, a light and bulky article, rated 1st Class in both the rail [fol. 1153] and motor classifications, on account of its light weight; and yet, somebody has got it in the exceptions on the same basis as Road Grader Disks.

On pages 53 and 54,—and I am now quoting from Mr. Jensen—Mr. Jensen says: "The function of the Western Classification is to serve as well as may be, the needs of class rate traffic in the wide expanse of territory within which it nominally applies, and it should not be allowed to become almost a dead letter, as it is today, merely in order to protect a special situation existing only between a dozen cities on the Pacific Coast. Moreover, until uniformity of relationship between classes, uniformly expressed, is attained within Western Classification territory, there is no possibility of unifying or merging that classification with either of the other two major Classifications." That statement on the part of Witness Jensen indicates a lack of knowledge of the Western situation.

Q. Well now, regardless of whether he knew the Western situation or not, Mr. Fyfe, what have you to say with respect to the last sentence there which you have quoted? Is that true, or not, in your judgment?

A. I say that the Classifications might possibly be unified. They would have to be unified by stating the column ratings in the classification, like 37½, 35, 42½, and so on, which can be numbered 1 to 10, or 1 to 12, or 1 to 15, whatever might [fol. 1154] be found necessary; and let the rate scales on the Coast fit in with that.

By Mr. Hughes:

Q. In that connection, Mr. Fyfe, you have previously testified that most of the shippers want a unification downward,—have you not?

A. Absolutely, yes, sir, and I will go into that a little further.

Q. Are you therefore making that reservation, when you say that it is possible to unify the classifications?

A. Yes, sir. You have got to unify the ratings upward, unless you give the railroads away.

Chairman Aitchison: Continue.

A. The witness' statement indicates lack of knowledge of the Western situation. As to the Pacific Coast situation, the Coast states all prescribe Western Classification for rail traffic and in California for motor traffic. In Washington and Oregon Western Classification applies over rails, and motor carriers may use either rail or motor classification,

which are on the same basis, especially 4th class and higher.

The Coast adjustment of class rates and their percentage relationship, if I am correctly informed, was largely prescribed by the Commission after careful review, and so far as we have knowledge the shippers are satisfied and the statement that the Western Classification should not be allowed to become a dead letter as he alleges it to be to pro-
[fol. 1155] tect a dozen cities on the Pacific Coast is not a correct statement. As to exceptions to the Classification on the Pacific Coast, thel are a limited number, nothing to compare with the exceptions in the territory east of the Rocky Mountains.

By Commissioner Aldredge:

Q. Mr. Fyfe, I do not know that I correctly understood your reference to Mr. Jensen's quotation, the quotation from Mr. Jensen's exhibit. The first statement he made was concerning the function of the Western Classification. Do you disagree with that?

A. Absolutely, I do disagree with that, yes, sir.

Q. You think, then, do you, that its purpose is not to serve, as well as may be, the needs of class rate traffic?

A. I disagree with Mr. Jensen, because the Classification is serving the territory. His opinion is that it is not serving the territory, that something else is doing it.

Q. Perhaps I did not correctly understand your statement. What do you conceive to be the function of the Western Classification?

A. To serve the carriers and the shippers in the territory involved.

Q. Well, is that not what he says?

A. No, sir. We believe that it is doing that, and Mr. Jensen says he does not think it is doing it.

Q. Well now, I was just coming to that.

[fol. 1156] A. All right.

Q. He says that is the function of the Classification. I presume he is talking about the Classification proper, when he says that it is becoming a dead letter. He is using rather positive language there, but I understand him to mean that its function is declining. Is that a fact?

A. Not on the Pacific Coast.

Q. No; I mean, in Western Classification territory.

A. It has been destroyed, Mr. Commissioner, to some extent by the publication of exceptions to meet motor truck

competition, contract carrier, or so-called private carrier competition, which is moving a large volume of traffic at ridiculously low rates,—and which situation I hope to see corrected some day, getting it back to the classification basis, where it properly belongs.

Q. Well, I would assume then, Mr. Fyfe, that you disagree with Mr. Jensen only as to the degree to which the function of the classification is declining; is that correct?

A. That is true.

Q. In other words, you do not think that it is declining, or has declined, quite as much as he does?

A. I am sure it has not.

Q. Well then, that is the principal thing upon which you disagree with him; is that correct?

A. Yes.

[fol. 1157] Com. Alldredge: Thank you.

Chairman Aitchison: If you are going to take up another subject, now, Mr. Fyfe, I take it we might as well suspend until 2 o'clock.

The Witness: All right, sir.

(At 12:30 P. M. recess until 2:00 o'clock P. M.)

Afternoon Session

The hearing was resumed pursuant to recess.

2:00 o'clock P. M.

Chairman Aitchison: Come to order, gentlemen.

Mr. Hughes: Mr. Fyfe.

R. C. Fyfe resumed:

Direct examination (Continued).

By Mr. Hughes:

Q. Mr. Fyfe, have you prepared answers to certain questions submitted by the Commission in its notice of January 9, 1940, relating to Classification subjects?

A. Yes.

Q. Are those questions, in that notice referred to, numbered from 10 to 16, inclusive?

A. Yes.

Q. I will read you the question, first, as it appears in the notice, and then you may make your answer thereto. Question 10: "The Classification principles or elements to be [fol. 1158] considered and employed in the determination of an appropriate classification of articles, and whether they shall be the same for the Motor Classification as for the Rail and Water Classifications."

A. The elements are: The weight per cubic foot of the article, as packed for shipment; liability to damage; liability to damage other goods with which loaded; the value per pound in comparison with analogous articles of like weight and value, comparison with competitive commodity, possible carloading given consideration, as to character of the goods and packing, to determine the extent to which capacity of cars may be used, commercial conditions and unit of sales—trade conditions, and value of the service. These principles, we submit, are sound, and should govern classification for all uses, Rail, Motor or Water. We submit that these elements are proper. For convenience, I submit as my Exhibit No. 69, a limited reference to decisions by the Commission and the Courts dealing with the factors mentioned above.

Q. Is the exhibit to which you refer, Mr. Fyfe, headed "Reference to Decisions Dealing with Classification Elements" etc.?

A. Yes, sir.

Q. Consisting of how many pages?

A. Six pages.

[fol. 1159] Mr. Hughes: At this time, if the Chairman please I should like to have the exhibit marked as Exhibit No. 69 for identification.

Chairman Aitchison: Let it be marked.

(Exhibit 69, Witness Fyfe, marked for identification.)

Mr. Hughes: I think it may as well be offered in evidence at this point, your Honor.

Chairman Aitchison: Without objection, it is received.

(Exhibit 69, Witness Fyfe, received in evidence.)

By Mr. Hughes:

Q. Question No. 11 is as follows: "The number of classes necessary for a classification of freight for Rail, Water and Motor transportation."

A. In my opinion, 10 classes would constitute a sufficient number for Western territory.

Q. Question No. 12 is as follows: "Shall the classification of freight for Rail, Water and Motor Transportation, be revised, to accord more or less importance to a weight-space basis, with less or more regard to value?"

A. In the making of a classification for all forms of transportation, the factors covered by my answer to Question No. 10 must be carefully considered. Weight per cubic foot is an important factor, but other factors must be carefully weighed. Take for example, Nitric Acid in carboys, a cheap acid, with a substantial weight per cubic foot, and [fol. 1160] a low value and yet it is highly dangerous in transportation. The breakage of a carboy of Nitric Acid in a merchandise car usually means a severe fire, and the destruction of the contents of the car. While the value and weight are considerations to be weighed, the fact that no goods can be loaded on top of, or in direct contact with, the packages, must be considered, in view of the loss of loading space between the tops of the carboys and the roof of the car. Because of the fact that the necks of the carboys project beyond, they must be loaded so that nothing comes into contact with them.

Vanilla Beans packed in wooden boxes,—and they are all packed in wood -weigh from 38 to 40 pounds per cubic foot. The current war prices are $14.00 to $16.00 per pound. The normal price is $2.00 to $4.00 per pound. The classification rating is 1½ times first class less than carload, 4th class carload, minimum weight 30,000 pounds. Compare this with Annatto Seed, weighing 40 pounds per cubic foot, with a current value of 6½ per pond, rated less than carload 2nd class, carload 5th class, minimum weight 30,000 pounds. We submit, here are two commodities of approximately equal weight per cubic foot, with a wide spread in the value, which should be taken care of in the rating. Now I might add that the statement has been made, "Oh, well, you never lose any Vanilla Beans." The facts are that during the last war, the North Western Line lost 100 pounds of Vanilla Beans, [fol. 1161] moving from Chicago to Winona, Minnesota, the charge — which was slightly in excess of $1.00. They had to haul all the Vanilla Beans that Watkins Company at Winona would use in two or three years before they ever got that $700 back in freight charges.

The question of liability to breakage and loss must also be considered. Window glass and plate glass weigh approximately the same per cubic foot, and yet there is a wide difference in value. There is also a wide difference in the value of plate glass, predicated upon the size of the plate. There is a much greater hazard involved in moving the large sizes, than there is with the smaller sizes, and consequently the Classification today reflects the difference in the hazard, and the value. Another example which might be considered is the rating on Coal, Ore or Stone Crusher Parts, rough, crude material, made largely of Manganese Steel, practically unbreakable, rated less than carload 4th class. Compare these with Machinery Parts, such as finished Crank Shafts for Machinery, rated 1st and 2nd class. They weigh about the same per cubic foot. Crusher Parts cannot be damaged, but a Crank Shaft, if sprung out of alignment, cannot be used and must be reworked. Both are of substantial weight per cubic foot. There is a wide spread in the value on account of the machine work on the crank shaft. For more than 50 years the classification prin-[fol. 1162] ciples covered by my Exhibit No. 69, have been followed. They are sound and reasonable, and should not be cast lightly aside.

Q. Question No. 13 is as follows: "Shall the description of articles and packing requirements be the same for the Motor Classification as for the Rail and Water Classification?"

A. The description of articles and the packing regulations should be uniform in all classifications. This is to the advantage of shippers as well as carriers. Shippers, in packing and warehousing their goods, may ship by rail, motor or water, and it keeps costs down to have uniform methods.

Q. Question No. 14——

Chairman Aitchison: Now wait a moment, right there.

By Chairman Aitchison:

Q. Does not that principle break down, Mr. Fyfe, when you come to consider something like household goods?

A. That is true, where household goods are moving in truckload quantities, yes, Mr. Chairman. But aside from the household goods, and the furniture, in truckload volume, where they load the material onto the truck, and use pads

and blankets, it generally holds good throughout the entire classification.

Q. Well, take your old item of emigrant movables. That was 1st class, was it not?

A. Less than carload, that is true, yes, sir, but that has been split, in the remaking of the classification, and we now [fol. 1163] have an emigrant outfit rating and a household goods rating. We still, in order to try and build up the Western territory, maintain our Class B rating on the emigrant outfits today,—I can give this to you in just a minute, here——

Q. Well, what I was getting at, Mr. Fyfe, is this, that there the packing requirements are very different than they are with respect to the items that collectively make up the outfit, or the shipment of emigrant goods,—are they not?

A. Yes, sir, that is true, and our truck friends have found, to their sorrow, that attempting to handle furniture less than carload, without almost the maximum of packing protection, has not worked out, because claims have taken all of the revenue away from them.

Q. Are there any other articles of a similar character, that you know of, that you can think of at the moment?

A. No, sir, I have none particularly in mind, aside from the household goods and furniture in truckload quantities, where they can stow, and prevent a shifting load,—which situation of course the carriers, rail carriers, could not possibly meet.

By Mr. Hughes:

Q. Question No. 14 is as follows: "To the extent that sizes of railroad car and truck bodies are to be considered in the determination of minimum weights applicable in connection with carload and truckload ratings, what sizes of car and truck body shall be used as the standard?"

[fol. 1164] A. Up until a few years ago, the basis for the minimum weight was the 36-foot car; generally speaking, the car of 2,448 cubic feet. However, in fixing minimum weights, the Classification Committee never did figure on a basis of 2448 cubic feet being used. It gave consideration to the character of the goods, and the character of the package, and it was seldom that more than 2200 cubic feet of average carrier run-of-business, could be loaded into a car. We also gave consideration to commercial conditions, and

the unit of sale in certain lines; and in the earlier days we also gave consideration, in our respective territories, as to what was the volume that could be taken in our particular territory. Of course now that we have unified the minimum weights, the packing requirements, and the rules of the classification, those are all out of the picture. At the present time the 40-foot car is almost universally what might be termed the standard car, and while we have not attempted, generally speaking, to predicate minimum weights on the 40-foot car, in putting new commodities into the classification, we have tried to get the minimum weight up as high as we possibly could, in fixing the rating.

Q. Question No. 15—

A. Pardon me, Mr. Hughes, but before you go to the next question, please, I would like to deal with this question of motor freight. It is my position that the volume rating for [fol. 1164a] the motor carriers should be the same as the carload minimum weight for the rail carriers.

Chairman Aitchison: I should be glad to have you amplify your reason for that, Mr. Fyfe.

The Witness: I am coming to that.

Chairman Aitchison: Very well.

A. To make a lower basis for the motor carriers means a breaking down of the carload movement, and the rail carriers would have to meet that situation. If that condition were to exist, with a lower minimum weight for the motor carriers, for truckload movements, then I submit that the truckload rates should be on a somewhat higher basis than the rail carload rate. Now, the difficulty,—and it is confronting us right now; I have a letter from Mr. Blanning on it—is the difference in the truck weight limits in the various states. In the Western states, or a great many of them at least, there is no prohibition against the use of a truck and trailer, with the result that the Western carriers, in the far west particularly, can operate a truck and trailer, and handle a full carload, and even more than a full carload, hauling it behind one tractor. Now how a classification could possibly be readjusted to meet a situation of that sort, is far beyond me, with the difference in the weight limits and the dimension limits, and so forth, in all of the different states.

[fol. 1165] By Com. Splawn:

Q. If I understood your testimony correctly, Mr. Fyfe, you stated that formerly, when fixing the minimum weight for a rail car, you calculated that about 2200 cubic feet was as much as could be loaded into the car; is that correct?

A. That is correct on the general average run of package merchandise, yes, sir.

Q. You thought that was an important consideration, did you not?

A. Yes.

Q. The capacity of the car.

A. Yes, sir.

Q. Now why should the motor carriers ignore the capacity of their vehicles, merely because it would be inconvenient for the railroads to have them publish their tariffs in terms of carload capacity?

A. Well, you have got two types of motor trucks, Mr. Commissioner. I see them passing by my office every day. They are supposed to have a capacity of approximately 1,000 cubic feet, but they are open-top trucks and the load is covered with a tarpaulin, and it is just as high above the side of the truck as they can get it, and get clearance where they are going, I would judge from the looks of the load. I have also seen them going by with a tail gate load, covered with a tarpaulin. Now, are you going to take tail gate loads [fol. 1166] into consideration?

Q. Well now, does your reasoning with respect to the classification for motor cariers follow that same line all the way through?

A. I do not know that I just follow you, Mr. Commissioner.

Q. As I understand it, you advocate the same classification for motor carriers and rail carriers; is that right?

A. Yes, sir, that is true, and the motor carriers have practically got that 99.9 per cent today. We endeavor to keep the motor carriers posted. As a matter of fact, I give Mr. Jackson the proof of every change that we make, in order that the motor carriers can make corresponding changes, and keep the industries on a parity.

Q. That is to say, all of these decisions which you have put in your exhibit, and all of these considerations which must be borne in mind in differentiating one class from

another, and dealing with intervening classes, are to be observed, so far as the railroads are concerned, but the economics of the motor carrier industry, I gather from what you have said, are to be ignored, and they are just to follow along and publish whatever you publish. Is that correct?

A. No, not at all, Mr. Commissioner. They can do whatever they please, and we cannot stop them, except through a protest, and asking for suspension. But the same economic factors that enter into the consideration of ratings [fol. 1167] for motor carriers apply with equal force to the rail carriers, and I think that they are beginning to realize that at the present time, with their increased costs.

Q. Well, there is something in the Act about the inherent advantages in each form of transportation. Now if we are to define, after carefully studying and analyzing them, the rail economics, then are we not required to do likewise for the water carriers and the motor carriers?

A. I think so, yes.

Q. And do you think, then, that the answer will be the same, as to classification and ratings?

A. I think basically that will be true, yes, sir, especially with the general line of traffic that moves under the classification.

By Chairman Aitchison:

Q. Well, following your reasoning just a little further, Mr. Fyfe, why should you not have just the same minimum on sugar from New Orleans up, as the barge line?

A. I am not familiar with the situation there, Mr. Chairman. That is all moving under commodity rates.

Q. Well there is a barge line there that has capacities that are a good deal larger than your freight cars. It makes the rate; it has the lowest rate.

A. That is true.

Q. Well now, why should not your volume minimum be [fol. 1168] made on the basis of the barge line minimum if the motor carrier minimum ought to be made on the basis of the carload minimum?

A. Well, I do not know of any reason why the barge line should not make it, because, you might say, they are handling a multiple carload in one barge.

Q. But there is just the one container that it is shipped in?

A. Yes, but they may ship out, when it leaves the barge line, what is in one barge of 300 tons, or 500 tons, in 10 boxcars.

Q. Or it might go directly into a warehouse.

A. Yes, sir, that is true, and then go out on the balance of the through rate in carloads.

Q. And it may go out by truck also?

A. That is true.

Q. Well, would you apply that principle also with respect to your tank car rates? In other words, would you have the minimum for the motor tanks the same as for your tank cars?

A. No, sir.

Q. Why not?

A. Because, as I understand it, there are very few motor truck tanks that are 4500 gallons in capacity.

Q. Well, then, let me ask you this——

A. Just a moment further, Mr. Chairman.

Q. Continue.

[fol. 1169] A. Our tank car rates are all predicated on a rate per hundred pounds. All of the motor carrier rates that I have examined, or seen—and I have seen a lot of them—are predicated on so much per gallon, and so many gallons per truck, and I think that they vary, the rates vary with the size of the equipment that a man is using, from the looks of the rates that I have looked over.

Q. Well, your point, then, really, with respect to merchandise that is moving by truck, is that because there are so many trucks that are able to be hooked up to a tractor, or so many trailers that are able to be hooked up to and be hauled by a tractor, that have a capacity comparable to an ordinary boxcar, the two minima ought to be the same.

A. Yes.

Q. That, really, is your point?

A. Yes, that is true; and further than that, Mr. Commissioner, in the case of some of these commodities, where you have got a commercial minimum, a large truck body will readily carry that minimum weight, say, 20,000 pounds.

Q. The trailer.

A. Yes. That is our difficulty.

By Com. Alldredge:

Q. Mr. Fyfe, is there a standardization of trucks, as there is of freight cars?

A. I am not familiar with that, Mr. Commissioner. That is a question that should be answered by the trucking [fol. 1170] people. I know, when I go into the far West, in Pacific Coast territory, I see very much larger trucks and trailers than I do back in this part of the country. There is a lot of special equipment out there for handling road machinery, and that class of material, over the road, that will take commodities as heavy as anything that we can put on a flat car—big 16-wheel jobs, where the empty vehicle will weigh six or seven thousand pounds alone.

By Mr. Hughes:

Q. Question 15, Mr. Fyfe, is as follows: "The desirability of making less than carload and less than truckload ratings varying with the weight or the volume of the shipment."

A. We do not favor making varying less than carload or less than truckload ratings based upon weight, for example, 2000, 4000 or 6000 pounds. Such an adjustment tends to break down the carload or truckload ratings where published.

By Com. Alldredge:

Q. Let me ask you a question about that.

A. Yes, sir.

Q. The Western lines do have such ratings in their exceptions, do they not?

A. There are some in there, yes, sir, that were made to meet truck competition, as I understand it. However, in these days of stress in transportation, we think that it would be an exceedingly bad policy to set up a general example of what should be done.

[fol. 1171] Q. As a representative of the Classification Committee, then do you not think that that is a sound policy?

A. I do not think it is good policy, no, sir.

By Mr. Hughes:

Q. Question No. 16 is as follows: "The practicability or necessity of a uniform basic classification of freight for all

rate territories (a) for all transportation agencies, or (b) for each transportation agency."

A. It is not practicable, in my opinion, nor is it necessary, to make an absolutely uniform classification. While there has been a steady unifying of the less than carload ratings in the three classification territories, as far as ratings of 3rd class and higher are concerned, it has been done at the expense of a considerable loss in revenue to the Western carriers, both rail and motor, with little or no compensating increase in the tonnage carried. For example, when the ratings 3rd class and higher were made uniform by reducing them to the lower basis in effect in the other territories, the rating on machinery, set up, was reduced in the West from 1st class to 2nd class, and K.D., in many instances, from 2nd to 3rd class. That change was made against my best judgment. We had always differentiated between setup and knocked down machinery, but to accomplish uniformity in the less than carload ratings on machinery, we cast aside our previous findings. Now there is an extremely large amount of machinery that moves less than carload in [fol. 1172] Western territory, that is, relatively speaking, and that involved a serious loss. The Western lines are largely granger roads, producing farm products, livestock, products of mines and forests, and reductions on such commodities as machinery were a serious loss. The answer to uniformity is that the shipper desires uniformity where it results in reduction in ratings and opposes uniformity where the results are increases. If the tonnage originating at and destined to each territory was of like kind and character, and moving in equal volume between points in each territory, or interterritorially, then uniformity might be possible; but that condition does not exist, and in my opinion would be difficult of attainment. For example, machinery, carload, in Western territory is rated Class A, minimum weight 24,000 pounds. The Commission in all cases where the rating has been attacked, has upheld the classification of Class A—45%; and yet in Official and Southern territory, which were used for comparison in such cases, Class 40 applies—the Class 40 rating.

Q. That concludes the Commission's questions.

A. I would like to say that after more than 30 years in Western Classification work, the Classification today is on a more reasonable basis than it has been at any time — Western Classification No. 1 was first published, in 1887. It

cannot be said that that is alone the work of the rail carriers. It is the work of the shippers, producers, and the [fol. 1173] Interstate Commerce Commission, as well as the carriers. When a manufacturer presents a petition for change, which is publicly docketed, and the classification elements submitted to warrant the change requested, and which revision also has the approval of others, both manufacturers, jobbers and users, this we might term classification made by shippers. There is no more reasonable method or way of making a nondiscriminatory adjustment, than the procedure followed in the past. Now there have been some intimations here, if I understood some of the witnesses correctly, that changes cannot be made unless the other territories agree to them. I do not agree with that statement at all. If we are convinced in Western territory, that our classification is wrong, and that conditions warrant a change, we are going to go ahead and make that change. A good example of that was when we reduced petroleum oil to 4th class, which in a measure was forced—or first started when the Iowa Commission made 4th class at the request of the jobbers at Council Bluffs. That spread to Minnesota, it spread to the Dakotas, it got out into Nebraska, out into Kansas, out into Texas, spreading largely over the territory except in the far West. After looking into the situation I concluded, with the members of the Western Classification Committee, that 4th class might well go into the classification, and the exceptions be cancelled. We notified the [fol. 1174] Southern and the Official Classification Committees of what we were going to do. The rates were uniformly 3rd class in the three classifications. The Southern Classification Committee notified us to make a corresponding change in their territory. They had some exceptions in their territory that were lower than 4th class, in some states. The Official Classification Committee at that time did not make the change; but later, my recollection is—and I can check it in just a minute here—it did come along and make the 4th class rating. Now there are times when subjects are on the docket of the Classification Committee, where somebody wants to make a change that is going to very seriously affect our territory, and affect our adjustment, perhaps not on the particular commodity, but that might force revision on competing commodities, when we will say to the South or to the East, "Now, we object to that. We do not want to do that. If you want to do that in your territory, take care

of it by an exception, but do not upset the entire country," and that is what has been done, and that is what will continue to be done, and what should continue to be done. The conditions are so very different in the various territories that the Classification Committee should not be tied down and hamstrung, with a uniformity that will not meet the situation that we have to work under.

By Chairman Aitchison:

Q. Is the tendency now toward a greater refinement in [fol. 1175] gradation in the classification, or the the reverse?

A. I am sorry, but I could not hear that.

(Question read.)

A. Oh, it has been the reverse. I was coming to that in just a few minutes, Mr. Chairman. My Boyle, in his testimony, referred to making the same rates on all types of packages. When the Uniform Committee was established in 1908, to rewrite the classification, the packing specifications in all of the classifications were exceedingly light, and the claim account was going up by leaps and bounds. That committee was instructed to carefully go into the matter of the packing specifications, and go into the rewriting of descriptions. Now you will find in the classification today, many items, especially in the drugs and chemicals group, where the rating is 1st class, but an article under the same name, shipped in bulk, in barrels, will be 3rd class. There is every reason in the world for that. Those two commodities, the one in glass and the one in barrels, are just as different, as to price and quality, as night and day. In other words, the article which goes in glass is the chemically pure article that is going to go to the drug trade, very high in value. The article that is in bulk, in a bulk container, is going to some producer who is going to use it in making something else, for an entirely different purpose. It is not chemically [fol. 1176] pure; it is what is known as "technical" or some other grade, and the price will be 30 to 40% of the higher price. Now that was all reflected in the work that the Uniform Committee did. We are gradually getting away from some of that. We are having commodities in cans, and putting some of them down on the same basis as in bulk, in barrels.

Q. At one time the Western Classification Committee ha[illegible] did it not, some system of giving different numerical weights to the various elements?

A. I was just going to talk about that, Mr. Chairman.

C[illegible]man [illegible]tchison: All right. I seem to be examining th[illegible]ess.

A. Back in the early days of the Western Classification, when Mr. J. T. Ripley was Chairman of the Committee, and did not have very much work to do, he opened a ledger—which by the way was the pride of Commissioner Meyer; he thought a great deal of it—and from the classification records he figured out, on every commodity upon which they had the information, the weight per cubic foot and the value per pound, for each class.

[fol. 1177] Then he would take, say, where they had a double first class rating, the number of cubic feet in 100 pounds, and he added to the number of cubic feet, the value per hundred pounds, and that gave him his classification unit for the double first class rating, and the related articles, other articles, down the line. Now in those days, of about two classification meetings uper year, the chairman would issue rulings which were based on applications that he had from shippers or from railroads, in connection with which he would only have one man's weights and values, and he would rule, "Well, based on this weight and this value per cubic foot, the rating should be so-and-so," and he would make his ruling that way, giving no consideration to packing, liability to damage, or anything else; and then he would publish those rulings. Then when the Classification Committee met at its semi annual meeting, those rulings were passed out to the other gentlemen, who did not know anything about them, except that the chairman had ruled so-and-so, and the rulings of the chairman were approved, and then they would become items in the classification. If you will go back to the old classification, you will find some of those items in there, without any packing regulations at all. Now when we undertook to take over the first uniform classification work—well now just a moment. I am getting a little bit [fol. 1178] ahead of my story, here. In 1907, at the insistence of the Commision, an effort was made to determine whether or not a uniform classification was feasible, just like we are doing now. A committee of 15 was appointed,

5 from the East, 5 from the South, and 5 from the West—and I was one of the Western members—to thoroughly go into the matter, and make a recommendation. We met in Chicago January the 2nd, 1908, and we submitted our report to the three Executive Committees in April, which was to the effect that it was feasible and desirable to make uniform rules, uniform descriptions, uniform packing regulations, and uniform minimum weights. No action was taken on that until along in May, when it was decided to organize a Uniform Classification Committee, to carry out the recommendations, the question of ratings being put aside. It was decided that it was not possible to make uniform ratings. A new committee was then appointed, of which I was one of the members, and started working on September 15th, 1908. That committee was in continuous session. The men were segregated from all of their railroad connections, and put in all of their time on that particular work. They made investigations all over the United States. They dealt with national associations, like the American Chemical Society, and got all of their recommendations, and the descriptions, minimum weights and [fol. 1179] packing requirements that are now in the classification, are practically the work of that committee. Toward the end of the Railroad Administration, the chairmen of the three Classification Committees were called to Washington,—that is, Mr. Collyer, of the Official Classification Committee, Mr. Poe of the Southern Committee, and myself, of the Western Committee;—and we were advised by the Railroad Administration that, after consulting with the members of the Commission, they thought that the time was desirable to get a more simplified and consolidated classification. We three gentlemen were instructed to make that book. The book was gotten up in proposed form, printed, and submitted by Mr. Chambers, Director of Traffic, to the Commission. I think that Mr. Chambers wanted to go ahead and put it into effect, without any hearings. It was the view of the Commission, however, that there should be public hearings. We did have public hearings all the way from the Atlantic Coast to the Pacific Coast. Following that, we got the tentative report of the Commission. Now in that work we had endeavored to iron out some of the low spots, and some of the high spots, but in the final outcome, the book was adopted with practically no change in rates. As a matter of fact the Com-

mission practically told us that that was not the time for a change in rates, and we were not supposed to make any [fol. 1180] such change. Now there has been a gradual unification of the classification. When we are dealing with new items, we try to get the ratings in on a uniform basis, and new items are turning up, and substitute items, every day. You may say, "Well, why do you not do that on all of them?" Because it cannot be done on all of them. There will be an item where we have, say, Class B in the West, 5th class in the East, and Column 35 in the South. Now we might agree on 5th class in all of the territories, or, say, 37-½. But that item is analogous to another item, in one of the classifications, with which it competes, and if we made the rating on the new item higher than the rating on the competing item, there would be a complaint right away. So that we have got to keep away from uniformity in some cases, to keep things lined up that are in competition with each other. The first big attempt, in trying to bring about uniformity, as the Commission says, was in I & S 76, reported in 25 I. C. C. We had thousands of pages of testimony there.

By Chairman Aitchison:

Q. Was that the old Western Classification No. 51?

A. Yes, sir. Now there we tried to correct some of our Western rate situations, and get some of our rates up to where they were in the other territories. There again we were criticised for trying to do too much at one time in advancing the ratings. They said we had better go a [fol. 1181] little slower. As a matter of fact the Commission set us back on our heels pretty hard in the case of some things which we thought we ought to have, but I am frank to say that we have gotten a good part of them since, through cooperation with the shipping public.

Q. Mr. Fyfe, you used to have several state classifications. Are they all out now?

A. No. I was just coming, Mr. Chairman, to the matter of the Illinois Classification.

Chairman Aitchison: Gentlemen, Mr. Fyfe and I have had no understanding at all, as to his testimony. (Laughter.)

The Witness: In Illinois, we have the Illinois Classification, in connection with which I was successful in dealing

with the Illinois Commission, in getting them to permit me to put the Illinois ratings into the Consolidated Classification, which meant a saving of approximately $20,000 per year to the carriers and the shipping public. I am the doctor, as to Illinois, and in treating the Illinois rates I am carrying out the agreement made between the Illinois Commerce Commission, the Interstate Commerce Commission, the carriers, and the Illinois Traffic League—or, the Illinois shippers. That agreement was to the effect that, as the predominant production was in Eastern Territory, the Eastern rates must go, in Illinois. If it was a com-[fol. 1182] modity, the production of which was both in Eastern and Western Territory, the lower of the two ratings was to predominate. If it was a commodity that originated wholly or almost wholly in one territory, and that was a higher-rated territory, with which the Illinois shippers had to compete, the higher rating went into effect. Now generally speaking, Illinois is on that basis, except where one or two of my smart industrial traffic friends, when they were checking it in with Mr. Slater, in the old days, in Illinois, slipped in some of the exceptions that they had, that we have not been able to get rid of, but that we hope to get rid of some day.

By Chairman Aitchison:

Q. Are there any other state classifications now, Mr. Fyfe? Iowa at one time had one.

A. No, sir. Iowa has no classification, and Nebraska has none. They got rid of their classifications. Texas got rid of its classification. I understand that they have a little classification in Nebraska now for motor carriers, although I have not seen a late one; my friend has not sent it to me. But in the one that I did see before I wrote him 150 letters, to which I never got any reply, I found that copper washboilers were rated lower than iron or steel barrels.

By Mr. Hughes:

Q. To whom do you refer, Mr. Fyfe, when you say "my friend"?

[fol. 1183] A. My friend Jim Little,—and he is a good friend.

Mr. Little: Since Western Classification 51?
The Witness: Well, since you got into the game.
Mr. Little: Too long ago.
The Witness: That is all I have.

By Mr. Hughes:

Q. That completes your testimony with respect to uniformity, does it, Mr. Fyfe?
A. Yes.

By Com. Splawn:

Q. Mr. Fyfe, if you were called upon to drawn up a uniform classification, how many classes would you have in it?
A. I would not have more than ten or twelve classes, Mr. Commissioner.
Q. You say ten or twelve.
A. I think we might possibly go to twelve.
Q. And what would be the relation?
A. Pardon me?
Q. How would you step them down?
A. Well I would like to give some thought to that matter, Mr. Commissioner. I think, on the first four classes, that I would use 100, 85, 70 and 55. You could tell more about what your relative relation between the classes ought to be, if you knew something more definite about what your first class rate was going to be, because, with the pickup and delivery situation that you have now, and so [fol. 1184] much short-haul business, so much third class and fourth class business, especially fourth class, for short-haul traffic, when you take the pickup and delivery out, and the handling cost, and the terminal charges, you have not got anything left. To my recollection, in 1928, the General Investigation in 1928 of class rates in the West, 17000 Part-2, in the terminal cost study there were something like 140 points, and they were selected, by the way, by the state Commissions; and my recollection is that the terminal cost from origin to destination has averaged out 27.3 cents per 100 pounds. Where there was an intermediate transfer, it brought that up to 35 cents per 100 pounds. Now, if you take the minimum pickup and delivery, where you pay the shipper five cents if he will

bring it to you, or give him five cents if he will take it away, and add that minimum of ten cents to the single-line haul, you are getting a cost of 37 cents to start with, on your first class rate. Now, breaking that down, you are just out of luck on anything under, perhaps, 100 miles. Of course, you have got to trust to getting some of the commodities that are going to be moved a little bit more on the higher classes.

By Chairman Aitchison:

Q. Is it generally the rule that, with respect to articles which move less than carload, you will find a corresponding carload rate either one or two classes away?

[fol. 1185] A. Well there are very few of them, Mr. Chairman, that would be only one class away. Generally speaking, they are two or more classes away; and of course when you come into the lower ratings, where you have fourth class, or class C——

Q. Very well. That is sufficient, for the moment. Now take an article that is rated first class, and the first class rate, we will say, is $1. Under the four ratings which you have suggested, the carload rating would normally be 70 cents, or 70 per cent of first class, would it not?

A. No, Mr. Chairman, not of the first class rate. If the minimum weight, say, were 20,000 pounds——

Q. Would it be on an article rated first class, carload?

A. It might be, yes, sir, or it might be first class and fourth class. Say we have a minimum of 24,000 pounds. Take under our old machinery rating; set up with first class, and knocked down with second class; and then we had Class A, 24,000 pounds. But we had machinery which would only load 16,000 pounds, like some of the creamery machinery, where the rating was fourth class; and we have got some of those adjustments today, where we have got first class less than carload and fourth class carload, and second class less than carload and class A carload. We have first class less than carload on certain types of machinery, and Class A in carloads. Now, the first class is predicated upon the fact [fol. 1186] that the machinery is not boxed or crated; it has a high liability to damage; you cannot load anything on top of it——

Q. Well what I am getting at is this, now, Mr. Fyfe: Figuring second class at 85 per cent of first class, and third

class at 70 per cent, 70 is almost exactly 85 per cent of 85. Now when you come to make a drop from 70 to 55, you are getting much more of a difference in percentage than 15 per cent. In other words, 60 is almost as close as we can get, in round figures, to 85 per cent of 70. Now, what do you say, as a matter of general principle, with respect to these classes, say, 12 of them being related to each other in relatively close percentages, each to the one above, and each to the one below?

A. I think that would be all right.

Q. Would that in your opinion facilitate the making of adjustments in connection with analogous commodities, and also facilitate the making of adjustments on commodities that in some respect were analogous, but different in others?

A. I think it would, yes, sir, but you would have to take and rework the entire classification, and pick out all of the weights per cubic foot, and the values per pound and everything else. You would have to go back into the history of everyone of those ratings, and find out why it was made. I will give you a good example of that. Recently a big manu- [fol. 1187] facturer came in and said, "Here is a new one that we have got to have a rating on right away." I said, "Chemicals noibn." He said, "That won't do. We have got a new type of solvent."

Q. He had what?

A. A new type of solvent. Our solvents, noibn, are rated the same as the chemicals, but he did not want chemicals, and he did not want solvents noibn. I said, "What is the value of your article?" He said, "20 cents per pound." I said, "What does it weigh?" He said, "32 pounds per cubic foot." Well, the upshot of it was that he wanted the same rating as applied on another article, worth between eight and ten cents per pound. I said, "Now, why?" He said, "Well, when we get into mass production, and we are going to go into mass production very soon, the price is going to be less, or lower than this other one; it is going to do a better job, make a quicker drying job, and it is going to be less dangerous to handle. Now that is why I am asking for the same rating that applies on this other lower-value one." I said, "All right; we will give it to you."

Q. You did not tell him the same thing you told me—"You can have it, if you will shut up"—did you?

(Laughter.)

A. To show you, Mr. Chairman, how things have changed: [fol. 1188] I do not know whether the Commission realizes it or not, but we are making a lot of changes in the classification that never go on the public docket. Matters are too hot these days. Our old agreement with the National Industrial Traffic League was that everything had to go on the docket. Well, we finally got the National Industrial Traffic League to agree that in the case of a hot proposition, involving changing a package, that meant a reduction, we could go ahead and do it without putting it in the docket, and it would be all right. Now, we are making changes every day; we are changing things for the War Department, as you know, on one day's notice, issuing a supplement every week to take care of them. Well, in those same supplements go things that we are taking care of for the shippers also. One of the serious problems that we have confronting us today is the inability to secure packages in which to move a great many commodities. Now, I know that the Commission did not like our test-shipment permit rule when we put it in, but it has been a godsend in this emergency. We handled 15 carloads of frozen eggs on test-shipment permits, where we did not know whether they would carry or not, but the shipper was willing to take a chance, until we got the package tested out, and got them into cold storage, and found out what was good and what was bad; and then we got it in the classification. Now that the all-steel barrels have been [fol. 1189] frozen, and even the shipper that has them cannot use them, subject to the order, what are we doing? We are going in with lubricating oils in a plywood drum. We are working the thing out; we have got them running test shipments, on test-shipment permits, until we know whether it is going to stand up or not, or whether it is going to have to be strengthened a little. We are making all of these changes today, to meet the situation, and right now I ought not to be here at all. I ought to be at my desk in Chicago, handling these Government matters, that take up 90 per cent of my time. It is not a question of rates or ratings today, but it is a question of description, to cover these things. For example, we thought that we had the item of bomb fins all fixed up, but not later than last Saturday I provided for the shipment of bomb fins, not in metal crates, but just said "crates", because they said that they might have to use wooden crates, so we struck out the metal crates,

and just said "crates." That is the way this classification work is going, these days.

Q. Well, passing that: What are the mechanics, or what is the mechanical arrangement with respect to conflicts between the committees of the three territories, with respect to getting uniformity, as to packing requirements, descriptions, ratings and the like?

A. The subjects that go on the public docket are heard at [fol. 1190] New York and Chicago. Mr. Youker here reports our meetings, and copies of the verbatim testimony, since 1920, are in the files of the Commission, of every public hearing that we have had. Following the public hearings the committees sit down around the table, and the Western files are available to the other committees, if a question comes up as to whether the statements made as to the weight and value of a given commodity, are representative. In some cases we may have to check back, to see how the conditions have changed, if they have, since the rating was first established.

Q. When you speak of the committee sitting around the table, do you mean the particular committee which has docketed the proposal?

A. No, Mr. Chairman; I mean, all three of the Classification Committees.

Q. All three?

A. Yes, sir—Official, Southern and Western. Each committee has absolute jurisdiction over its own ratings.

Q. When you sit in New York, are there only Official Classifications that are under consideration?

A. No, sir. We hear them all at Chicago and New York. The final hearing is held, one month in New York, and the next month in Chicago; one meeting in New York, and the next meeting is held in Chicago.

[fol. 1191] Q. Where are the Southern meetings held?

A. Pardon me?

Q. Are the Southern meetings held in Atlanta?

A. They have a public hearing at Atlanta, yes, sir, but they attend the other meetings also. The three Committees attend all of the meetings, except the Southern, and we have quit going to the Southern meeting on account of the lack of representation down there. We spend 36 hours in getting to Atlanta, and then there is nobody at the hearing; but we do read the record. Now after all of these public hearings, then, as I say, the three Classification Committees

sit down around the table in joint session, and they agree upon what the descriptions will be, and the minimum weights, and the packing requirements; and then each committee fixes its own ratings. We have no voice in the Southern ratings; the Western Committee has no voice in the Official ratings. They may want to do something, and I may cry my head off, telling them that I do not like it; but I do not have any stopper on them. They can go ahead. We try to work things out uniformly; we are trying to work toward uniformity all the time.

Q. Well, on any of these occasions when you are, as you say, crying your head off, Mr. Fyfe, do you ever say to them, "Well, you fellows can go ahead and put in this rating in your territory, if you want to, but we are not going to concur [fol. 1192] in its application to Western Territory, where the destination ratings control"?

A. I have never had that situation come up, Mr. Chairman, because when we tell them, for example, that we are going to do something in Western Territory, it goes into the Classification. On the other hand, I have never had them object to anything that we wanted to do—either the Official Classification Committee or the Southern Classification Committee.

Q. Well then, in connection with movements interterritorially, controlled by classification, if there is a difference between two of the classifications, on a movement into Western Classification Territory, your judgment would control as to the classification which would apply—that is, the judgment of the Western Classification Committee would control, would it not?

A. As far as the West was concerned, yes.

Q. And vice versa?

A. Yes, sir. Now sometimes, when the Official Classification is reduced, when they do something that carries a reduction with it, we will ask them to take care of it by an exception. If it is something that they want to try and get down to the motor truck basis, we will say, "Take care of it in your exceptions, and flag it 'motor truck'." We say, "Do not force it in on us, as a reduced rating in the [fol. 1193] classification."

Q. They have, I believe, 3200 exceptions in the South. As far as the other committees are concerned, would there be

any reason why they should not be carried in the classification?

A. Yes, sir, every reason in the world, Mr. Chairman, particularly as far as we are concerned, because we think that they were made without rhyme or reason——

Q. Well, that is your judgment as against theirs.

A. Well, when we question some of them, they admit that they are not all right, and that it would be well to reconsider them; and I will tell you, they would cost us a lot of money.

Q. For the purpose of my question, however, Mr. Fyfe, you will have to assume that they are proper, that they comply with the law, that they are just and reasonable, being subject to attack, and that they have not yet been condemned. Now, is there any reason from the technical standpoint of classification construction, why those exceptions should not be put into the Southern Classification itself?

A. I think if they go into the Southern Classification itself, Mr. Chairman, they are going to force further reductions in the Southern Classification.

Q. Do you mean, by the analogy rule?

A. Yes, sir—and complaints.

[fol. 1194] Q. Complaints of discrimination which would follow?

A. Yes, sir. Those are the complaints that we get in the West, with requests for reductions. A man will think he is entitled to a reduction, and he will say, "Why shouldn't you make this the same as they make it in the South or in the East?"—when conditions are entirely different. Now, I do not know what actuated the South in making those exceptions. It is true that we have some of those exceptions in Western Territory, but there are lots of them that we have not got in there, and if I may say so, I blocked them. And why? Because they were going to wreck our entire adjustment.

Q. But as far as the Southern carriers carrying those exceptions in the classification is concerned, they are not prevented from doing that, as I understand your testimony, by the fact that you would not concur, are they?

A. No, sir, they are not. They can ask us for a concurrence.

Q. Would they have to?

A. No, sir. We have no voice in making any of the ratings in Southern Territory.

By Com. Alldredge:

Q. I judge from what you have stated here, Mr. Fyfe, that it is your view that it might be a good thing if you did have some voice. Is that correct?

A. In some of the things, yes, sir.

Mr. Hughes: If the Commission please, counsel desires [fols. 1195-1196] to express his appreciation of the Chairman's splendid examination of Mr. Fyfe: It has made counsel's task very much easier.

Chairman Aitchison: Oh, Mr. Fyfe and I have been rehearsing these things for a good many years.

The Witness: Yes, we have been through it all, Mr. Chairman.

Mr. Hughes: In the early portion of Mr. Fyfe's testimony, he made some allusion to the Motor Carrier Classification, which may have left the impression that he is appearing here as a witness for the motor carriers. If any such impression has been created, I desire to correct it, on the record, at this time. Mr. Fyfe is here as a witness, called by the Western Railroads exclusively. The witness is now tendered for cross examination.

Chairman Aitchison: Cross examine.

Mr. Townsend: Just one question.

Cross-examination.

By Mr. Townsend:

Q. Mr. Fyfe, I have had an experience in connection with blankets, that I want to ask you a question or two about. As you know, we manufacture blankets in large quantities and ship them in carloads——

A. Mr. Townsend, let us not talk about blankets, because they are before the Interstate Commerce Commission at this time in a formal case.

[fol. 1197] Q. I am not interested in that, Mr. Fyfe. I just want to know what your policy is going to be with respect to similar commodities. I call your attention to the rating on clothing, of equal value, and certainly no heavier in weight, rated second class in carloads. Now, is there any reason why you should take clothing, particularly woolen clothing, and rate it second class, when you will not give us second class on carload movements of blankets?

A. Mr. Townsend, the second class rating on carloads of clothing that is now in the classification was made by the Simplication Committee without rhyme or reason, for the purpose of helping out the freight forwarder, I expect; and if you will look at the rating on the woolen goods on which the clothing is made, you will find that there is no carload rating on the woolen goods; and it is ridiculous to make a carload rating on a manufactured product, and not make a corresponding rating, or a lower rating from the raw material from which it is made. Now as I stated, the entire blanket question is pending before the Interstate Commerce Commission at the present time, in a formal complaint, as to the carload rating——

Q. Oh, this has been in effect for many years, Mr. Fyfe.

Mr. Hughes: If the Commission please!

Chairman Aitchison: Just a moment, Mr. Townsend.

Mr. Hughes: In view of the statement of the witness, that [fol. 1198] there is at the present time pending before the Commission a formal complaint involving the subject that Mr. Townsend is now talking about, I move that all of the testimony bearing on that subject, be stricken from the record.

Mr. Townsend: That does not involve the rates from Minneapolis, if your Honor please, and that is all that I am interested in.

The Witness: It involves the rates all over the country.

Mr. Townsend: That is not a classification complaint.

The Witness: How?

Mr. Townsend: That is not a classification matter.

The Witness: Absolutely. It was filed at Lima, Ohio, attacking the rating, the carload rating on blankets in all territories.

Chairman Aitchison: Well, as we stated, I believe, in various of our notices with respect to this hearing, we do not intend to thresh out individual situations here.

Mr. Townsend: Oh, no, and I am not trying to thresh out any individual situation here, if the Commission please. I am merely trying to find out now from Mr. Fyfe what the policy is.

Chairman Aitchison: Then ask him what the policy is, in general, but do not try to pick out a matter which may be in litigation before us at this time on another record.

Mr. Townsend: When I asked him about the policy, he [fol. 1199] said that somebody went crazy, and put in the clothing rating years ago.

Chairman Aitchison: Well, he answered you that it was not anything that he had to do with.

Mr. Townsend: That is all that I asked him; and if that is the only explanation of the difference in rating between clothing and blankets, that somebody went crazy, so that we have blankets carrying the Official Classification rating, that is all I want to know. Thank you.

Chairman Aitchison: Is there further cross examination?

Mr. Bee: Yes.

Chairman Aitchison: Mr. Bee.

By Mr. Bee:

Q. Mr. Fyfe, there is one question of general information that I would like to ask you, and the commodity to which I am going to refer is found on the second page of your Exhibit No. 68—or rather, I mean to say, the third page. It is a commodity in which I do not have any particular interest, and I am merely using it as an example.

A. The third page, did you say?

Q. Yes, sir.

Mr. Hughes: Of Exhibit 68.

By Mr. Bee:

Q. Yes. It is No. 41, and as I say, I do not have any particular interest in the commodity itself, it is merely an example; so please do not tell me that there is a case pending involving that commodity, or something like that. The [fol. 1200] item that I refer to is headed "Tractor tread pins." It is third class less than carload in all classifications. Would you tell me why it should not have the same carload classification rating in all of the classifications, when it has the same less than carload rating in all of the classifications?

A. Well now just a moment, until we see what it is today.

Q. Understand, Mr. Fyfe, I do not care anything about the item itself. I am taking it merely for example.

A. The same ratings are in effect today. There has been no change in that item. The rating in the West is Class A, the machinery basis. There is no actual carload movement

that I ever heard of, of tractor tread pins in straight carloads.

By Chairman Aitchison:

Q. Well, is it important from a mixing standpoint?

A. Just a moment, if you please, Mr. Chairman. They are moved in mixed carloads with Caterpillar tractors. You will note that the weight of 162 pounds per cubic foot would warrant an extremely high minimum weight. The carload rating is on the same basis as the tractors. If we made the carload rating consonant with the 162 pounds per cubic foot, fifth class, which applies in the East, we would have a 36-pound minimum at fifth class; and when the man came to mix them in a mixture carload as repair [fol. 1201] parts, with his caterpillar tractors, he would be paying the caterpillar tractor rate on a minimum weight of 36,000 pounds. Now we gave the caterpillar tractor man just exactly what he asked for. He asked for a rate lower than the general machinery rate, because it is more analogous to hardware, and he wanted the hardware rate on it, and he wanted the machinery carload rate.

Q. Are those pins any more valuable, at 162 pounds per cubic foot, in the Southwest, than they are in the East, Mr. Fyfe?

A. Is your question: Are they any more valuable in the Southwest?

Q. Right.

A. I do not know what they sell them for in the Southwest.

Q. Well then, what difference does it make, whether it is 162 pounds or 412 pounds?

A. I do not understand the question.

Q. I am asking you what the relationship—or rather, why, the relationship of the commodity being third class less than carload in each of the territories, it should not have the same relative class in each of the territories carload.

A. Well I tried to tell you that the Official Classification Committee tried to go up on the machinery and machinery parts items, and the could not get away with it. Now then, let us see how far they did get, with that one.

[fol. 1202] Q. I can change that illustration, of course, Mr. Fyfe, to a number of other commodities.

A. Oh, yes, you can change it to maybe a hundred commodities, but there is a good reason for all of them, and you know it.

Chairman Aitchison: Well now it seems to me that there is a begging of the question here. There is an assumption that because fifth class has been prescribed in one column, and something else in another, they are different.

Mr. Bee: Well fifth class and A are considerably different, if the Commission please. Fifth class in the Official Classification is 35, and A in the Western Classification certainly is not 35.

Chairman Aitchison: No, but here the relation is one that seems to be technically predicated on third class, rather than first class.

Mr. Bee: Well, I agree with you, Mr. Chairman, but first I wanted to find the relationship of the uniform rating of the third class to first class, and now I am trying to get the relationship of the carload to third class, or to first class, which will be identical.

Chairman Aitchison: Well, then, your question is primarily: Is there a proper relationship between the less than carload and the carload?

Mr. Bee: Absolutely so.

[fol. 1203] The Witness: All right.

Mr. Bee: That is what I want Mr. Fyfe to tell me, Mr. Chairman.

The Witness: Now, Mr. Bee, this does not represent the condition that existed on the carload rating in Official Classification Territory. You are talking about something away back in 1930, now, and conditions have changed. The rating today in Official Classification is Column 40. It is identically the same as the machinery rating on tractors, and it was made Column 40 for the same reason that I explained that our Class A change was made.

By Mr. Bee:

Q. You told me to start with, Mr. Fyfe, that the ratings were identical.

A. Just a moment.

Q. I am not using this particular item because I am interested in it. I told you that I was not interested in the pins themselves. It just represents the point that I am trying to get at, Mr. Fyfe. If a commodity is rated

less than carload, third class in Official Classification Territory, and third class in Western Classification Territory, less than carload, why should it not have identically the same rating when moving in carloads, with the same minimum weight?

A. There are a good many reasons.

Q. Give me one.

[fol. 1204] A. You have got to deal with the general situation, with respect to competing commodities. Our rating may be correct, as compared with competing commodities. The Official rating may be wrong, The Official people tried to get all of their machinery ratings up to Column-45, but pressure from the shippers held them at 40. The view of the Official Classification Committee was that Column-45 would be a reasonable rating on the general run of machinery, with few exceptions, and if they had gone to that, if they had been able to go to that, this particular item to which you refer, tractor tread pins, would have been Column 45, the same as the others.

Q. Then may I ask you, Mr. Fyfe, why the three classification territories, or the three sets of railroads, should not forget all about the three classification committees, and fire them all, and put one classification committee in there, looking to a uniformity that will be a real uniformity, with everybody looking, not to what the Official man wants, and not to what the Western man wants, but looking for what is good for the nation as a whole?

A. And the shippers would shoot you.

Q. No, I do not think so.

Chairman Aitchison: Let us not argue with the witness.

Mr. Bee: Let me ask Mr. Fyfe one more question.

By Mr. Bee:

Q. As a matter of fact, Mr. Fyfe, you have as your prin-
[fol. 1205] cipal, the railroads, have you not?

A. How is that again?

Q. I say, your principals are the railroads.

A. Yes.

Q. And your principals have another agent who issues the classification exceptions, have they not?

A. Yes.

Q. So that when they desire to undo your work, they undo it through the other agent, do they not?

A. Yes.

Q. And the result today has been that our work has been practically undone, or very largely undone; that is true, is it not?

A. I would not say that, no, sir. May I explain?

Q. Yes.

A. When you talk about mixed carloads, where an industry as a whole comes in and asks for that—take for instance the poultry equipment men, the barn equipment men. We gave those people exactly what they asked for, a reasonable minimum weight, and everything; and the ink was not even dry on the classification before chiselers were before the Rate Committees, putting pressure on the railroads to go down to the agricultural implement basis on an entirely different line of equipment.

Q. Now you spoke of the great percentage, or the large [fol. 1206] percentage of less than carload traffic, or merchandise traffic, as you term it, moving under the third class and fourth class ratings. Are you not advised, Mr. Fyfe, that in the Southwest especially, the railroads have found it advisable, on both their interstate and their intrastate traffic, to use a new set of class rates, to avoid—or not affect the Southwestern scale as fixed by the Commission in Docket 13535, the Consolidated Southwestern cases?

A. No.

Q. You do know however do you not, Mr. Fyfe, that there are special class rates?

A. I do not know anything about that territory.

Q. Are you familiar with the mixtures that are prominent throughout Texas, for example, such as drygoods mixtures, the hardware mixture, and the drug mixture?

A. Well now I am familiar with the drygoods mixture, yes, sir, because that was put in over our protest by the Texas Commission, back in my own days, 35 years ago, in Texas, and I used to say that they had everything but rubber goods and diamonds in that mixture, which was put in to take care of a few jobbers in Texas.

Q. Have you seen the new Missouri mixture?

A. How is that?

Q. I say, have you seen the new Missouri mixture?

[fol. 1207] A. No, sir, I have not, but I expect that it is along the same lines. They try to take care of their people down there, particularly in Texas, and keep everybody else out.

Q. And the railroads try to take care of their people in the other territories, by reducing the rates likewise, do they not,—by making like reductions.

A. Well I think that the railroads have taken pretty good care of the Texas people, and people in the Southwest generally.

Q. Yes?

A. I think that they work very close together.

Q. Now you made the statement that every petroleum rate of the motor transporters that you have ever seen, was in cents per gallon. Are you not advised that the Interstate Commerce Commission itself has fixed interstate rates on petroleum products, refined petroleum products, in cents per 100 pounds, Mr. Fyfe?

A. Well, I am talking about the tariffs that I have seen, and the reports on tariffs that I have had for tank truck movement.

Q. I am speaking now about tank truck movement also, Mr. Fyfe.

A. (Continuing:) Which are published on a gallonage basis.

Q. I am speaking of tank truck movement also, Mr. Fyfe, where the Interstate Commerce Commission itself, as be-
[fol. 1208] tween Kansas and Oklahoma, and Kansas and Colorado, out in the far West, has fixed rates in cents per hundred pounds.

A. Well, I have not seen any of those figures. I have seen a lot of figures at pipeline terminals, at various places, however, for tank truck movement.

Q. Not fixed by the Interstate Commerce Commission?

A. No, not fixed by the Interstate Commerce Commission, but they are published by the truckers, and they are published on a gallonage basis.

Q. Have you seen any rates fixed by the Interstate Commerce Commission upon a gallonage basis, in any of the ten or twelve petroleum products cases which have been tried under the Motor Carrier Act?

A. No, I have not.

Q. All right.

A. I do not get those decisions.

Q. Now I think there is just one more question, Mr. Fyfe, and then I am through. You said you think that the motor

trucks in naming volume rates, should be required to use the carload minimum of the railroads.

A. Yes, sir—where you handle it in one truck, or two trucks, or a truck and a trailer.

Q. May I ask you, Mr. Fyfe, upon what basis your rule-34 is prescribed,—upon what size car?

A. Rule-34 at the present time, on closed equipment, [fol. 1209] applies to a 40-foot car. The minimum weight was predicated on a 36-foot car, as I testified previously, using about 2200 cubic feet.

Q. Yes?

A. And sometimes less, if the freight was of such a character that it would not topple over.

Q. But at the present time your rule-34 is based on a 40-foot car, or what we today call the standard car, I believe.

A. Yes, sir.

By Chairman Aitchison:

Q. 40-feet, 6-inches?

A. 40-feet, 7-inches. There is one minimum for everything, 40-feet, 7-inches and under, except for open-top equipment. We have a different line of minima in there.

Q. Rule-36 is based upon what?

A. How?

Q. Rule-36.

A. The 36-foot car.

Mr. Bee: No, not Rule-36, if your Honor please. I think that the Chairman has Rule-34 in mind.

By Mr. Bee:

Q. Now, Mr. Fyfe, do you know of any of the states in the Central West that would permit the movement of trucks on its highways that would be equivalent to the contents of a 40-foot car—that is, with a carrying capacity, or with a load, that would be equivalent to the contents of a 40-foot car?

[fol. 1210] A. That would depend entirely upon where it was.

Q. Well, generally speaking.

A. I do not know. I have not got a lineup of the latest information as to the capacity limits, the length limits,

or the weight limits. I have looked over some of the figures, and they are Greek to me, because they talk about weight per axle, and everything else. You would almost have to get a mathematician to figure it out for you, and I cannot tell you.

Q. Well do you not know, Mr. Fyfe, as a general proposition, that the total weight of the vehicle and the load is held below 40,000 pounds?

A. Well that would cover a very large portion of the amount of load that was in the vehicle.

Q. I say, the vehicle and the load.

A. What is the weight of the vehicle?

Q. I do not know. You referred to 60,000 pounds a little while ago.

A. No, sir, I did not say that. I said that there are certain types of vehicles for the handling of heavy machinery, like logging equipment, that are 16-wheel vehicles.

Q. Oh.

A. And that will take a load of 60,000 pounds or more.

Q. I misunderstood your statement, then. I thought you [fol. 1211] said that the vehicle itself weighed 60,000 pounds.

A. No.

Mr. Bee: Well that is all I have, then, Mr. Fyfe. Thank you.

Chairman Aitchison: Is there any further cross-examination of Mr. Fyfe?

Mr. Little: I have a few questions, if you please.

Chairman Aitchison: Mr. Little.

By Mr. Little:

Q. Mr. Fyfe, in the outline, or the statement, entitled "Answer to question 10," the first paragraph, I find a statement of the basis upon which you think that classification should be determined—is that correct?

A. Yes, sir. Those are primarily the factors that we have considered in the past, and what the Commission has always given consideration to.

Q. Well, do you know whether or not the same factors are taken into account by the Western, Official, and Southern Classification Committees?

A. They are supposed to be.

Q. Referring now to your previous testimony, that there are joint meetings of the representatives of the three Classification Committees: I assume that a statement of all of those factors that enter into consideration is before the three committees when action is being taken. Is that correct?

[fol. 1212] A. Oh, they have got them all in their heads.

Q. Where?

A. In their heads.

Q. Now, Mr. Fyfe, I notice in that list of items that are important in determining classification, one entitled: "Value per pound."?

A. Yes.

Q. That is more or less self-explanatory, but how do you distinguish between that item, and the value of service, if you do so distinguish?

A. Well, the value of the service comes right back to the value of the goods that you are transporting, their liability to damage, the risk that you are taking, the general condition of the goods, and so forth. Where an article is worth, as vanilla beans are at the present time, $14 to $16 per pound, or some of these other items that the Commission has found reasonable at one and a half times first class, some of these essential oils, even, that are worth $2.50 per pound, the value of the service——

Q. Is this item of value per pound——

A. Just a moment, please, Mr. Little, until I finish my answer.

Chairman Aitchison: Let Mr. Fyfe finish, please.

Mr. Little: Pardon me.

A. I was just going to add, the value of the service in [fol. 1213] transporting those items is more important to the shipper, when there is proper handling, than it would be in the case of iron or steel hardware, and the carriers should have greater compensation than they would receive for transporting 100 pounds of iron or steel hardware, where the risk, value and liability to damage or loss, are very low.

By Mr. Little:

Q. Have you finished?

A. Yes.

Q. Now is this item of value per pound, of primary use to the committees in considering the difference in the liability to loss and damage, and the cost to the carrier, arising from the different rates of loss and damage to the proportion of the tonnage handled of the various commodities?

A. I do not know whether I follow you there or not.

(Question read.)

A. No, sir, it does not go quite that far. In addition to the value, we are giving consideration to all of these other factors also. Now, the value may be very high. Today, the value of airplane engines in carloads is approximately $240,000, for a 40-foot car.

Q. Well now, that is not what I am asking you, Mr. Fyfe. My question is, just generally——

A. Just a moment please. Let me finish. The value of the service there would be very high, because they are getting [fol. 1214] the same rating as applies on the ordinary gasoline engine, that goes onto the farm, or the ordinary gasoline engine that is shipped on skids. But that higher value of the airplane engine is largely offset by the manner in which that engine is packed for shipment. You could turn over one of those engines, or a carload of them, with practically little or no damage, while if you turned over a carload of ordinary skidded gasoline engines, you would have plenty of damage. You have got to take all of those factors into consideration, in other words.

Q. My question, Mr. Fyfe, was, generally, as to whether you regard value as of primary importance in determining the difference in cost of transportation to the carrier, arising from the higher or lower difference in loss and damage to the particular shipments which are transported?

A. Oh, we give consideration to all of those factors—liability to damage, and all of them, yes, sir.

Q. Well, my question is, Mr. Fyfe, is that the primary basis which the railroads take into consideration—or which the Classification Committees take into consideration——

A. No.

Q. —or is value, in your judgment as a classification expert, of primary importance in determining the ability of the shipper to pay, when the rating is considered?

[fol. 1215] A. No, sir, it is not of primary importance. It is only one of the factors that enters in. Of course, the higher the value, the greater the profit, in the case of a high-valued article as compared with a sack of cement. There should be some difference there. In other words, we ought to get a little of that money, under those circumstances.

Q. In discussing the testimony of the Witness Jensen, and also in your other mimeographed paper, sheet 2, Mr. Fyfe, where you refer to pages 31 and 32, you discuss exceptions to the classification, and you say that the emphasis must be on the value, the high value of the commodity, in proportion to the rating assigned by exception. Is that right?

A. And not only that, but its weight per cubic foot, and the manner in which the item is packed. Do you, as a classification man, think that iron and steel hardware, and lamp chimneys, ought to be on the same basis?

Q. I am asking you now, for example, Mr. Fyfe, with respect to your discussion of the various oils, the value of the various oils, as shipped, under the exceptions, and I am asking you if your criticism is not primarily based on the high value, and the ability of the commodity to stand a higher rating than is assessed by the exceptions, in the case of these particular essential oils?

A. As to these particular essential oils here, yes, sir, and we have got other oils that I have not named, that go into [fol. 1216] the manufacture of vitamins, such as soupfin shark liver oil, and halibut liver oil, and the other oils in that group, worth $70 per gallon; and if anything happens to any of that, somebody has to stand a very heavy loss.

Q. Then do I correctly understand you to say that you think that the ability of the shipper to pay a higher rating for a given service, or in other words, the element of what the traffic will bear, is entitled to proper consideration, in arriving at a classification?

A. Yes.

Q. Now is it not true, Mr. Fyfe, that there have been differences between the judgment of the Classification Committees and the traffic officers of the railroads, in making exceptions, and that those judgments have been different with respect to the importance that is to be assigned to this factor of the value of the commodity, and what the traffic will bear?

A. No, sir. These exceptions on drugs and chemicals, for example, were forced by competition.

Chairman Aitchison: Well that is another way of referring to value of service, because the service is not worth any more than the substitute, if you have an equally efficient substitute.

The Witness: Yes, that is true, Mr. Chairman, but after all, there should be a reasonable adjustment of rates, and [fol. 1217] just because somebody wants to take some tonnage away from somebody else, and they do not take the trouble to find out what they are dealing with, or what is involved, but they just want to cut the rates for the purpose of taking tonnage away from the other fellow, we are getting into a serious condition. As to some of these essential oils, it is true that they do not move in great volume; but take your petroleum oils, upon which the Commission has fixed a reasonable rate in several formal proceedings. The price today is probably three times what it was when the Commission fixed the rate, and still we find it today in third class.

By Mr. Little:

Q. Are you aware, Mr. Fyfe, of the appearance of some of the principal traffic officers, vice presidents and others, on behalf of the Official Lines and the Southern Lines, before the Interstate Commerce Committee of the Senate, at which they discussed this very point, as to the variation between exceptions which they had published, and intended to publish, to the existing classification, and where they testified in substance that they had found it necessary to give less weight to the element of value of service in meeting motor carrier competition, especially considering the operation of private trucks?

Mr. Hughes: Now just a moment, please, Mr. Little. Can you cite for the record where that can be found?
[fol. 1218] Mr. Little: I could if I had the volume.

A. I am not familiar with that.

Mr. Little: I can supply it before the hearing is over.

The Witness: I do not know anything about it.

Chairman Aitchison: Well I submit also that they were using an ambiguous term, when they spoke of value of

service, because it has at least four different meanings, as used by economists, and by those in the rate game.

The Witness: I do not know anything about it.

Mr. Little: I appreciate that, your Honor. I intended to inquire about that, and I will now make that inquiry of Mr. Fyfe. Mr. Fyfe, in which sense did those gentlemen use the term, in the proceeding to which you have referred?

Mr. Little: It might be of interest, if the Chairman please, if we would have the witness answer as to whether or not he took into account, under the heading of value of service, the proposition that a given commodity is worth, say $2 per ton at Squedunk, and when delivered at Podunk it may be worth $4.50 per ton on the market.

By Mr. Little:

Q. Do you take into account, Mr. Fyfe, such differences, in connection with value?

A. We take into account what the shipper tells us he can afford to pay. Now what the shipper can afford to pay is the value of the service to him of course, is it not?

[fol. 1219] Q. I am asking you.

Chairman Aitchison: It might be more than that, because he might have some selling expense.

The Witness: That is true.

Chairman Aitchison: In other words, it might cost him something to find a purchaser for the commodity.

The Witness: Yes.

By Mr. Little:

Q. Well now, Mr. Fyfe, if you do take this illustration that I am referring to, as between those two points, where there is a difference in place-value of, say, $2.50 per ton, and you set a classification basis of double first class upon a relatively heavy commodity, a solid-loading commodity, do you not think that you immediately create a situation where, if the shipper has any considerable volume, he will proceed to acquire his own transportation facilities, if his cost, for trucking operations is less than the rates which you offer?

A. He might.

Q. Is it not true that that is one of the important difficulties which has been met by the carriers in all of the Classification Territories, with respect to meeting the competition of highway vehicles?

A. I do not think that is wholly true.

Q. Pardon me?

A. I say, I do not think that is entirely true. I think [fol. 1220] that considerable of this competition has been overdrawn by the shippers. I think that they have worked it to death.

Q. But whatever the weight to be assigned, or that is assigned, to these various factors, would it be your statement that all of these items were considered in arriving at the numerous ratings which are already uniform in the three Classification Territories?

A. No, sir. As I stated before, when we unified the first three classes, we were told to unify them on the lower bases, regardless.

Q. Well, but did you not consider these specific items, in arriving at your decision?

A. No, sir, we did not. Our ratings originally were made, predicated on these specific items, on the items that we put into the classification, and analogous articles; but when we were told to unify third class and higher, we did it without looking to the weight or value of them. It was — mistake.

Q. Well if there is now a great preponderance of uniform less than carload ratings as between the three classificaitons, would it be your testimony that the uniformity has been generally secured by disregarding the classification principles which you have enumerated?

A. Oh, no, not entirely.

[fol. 1221] Q. Well generally, then, Mr. Fyfe, what elements would you say been been disregarded in order to arrive at the uniformity which you show in the Consolidated Classification today?

A. A great number of the ratings were uniform, before we unified the items that were not uniform.

Q. I am asking you——

A. Just a moment.

Chairman Aitchison: Please let Mr. Fyfe complete his answer to the question which you just asked him, Mr. Little.

Mr. Little: Pardon me.

A. (Continuing.) We had a large number of less than carload ratings that were uniform, but we were told to unify everything, third class and higher, where they were not uniform.

Q. All right.

A. Now, that is what was done, with a broadaxe, without any consideration of what the classification elements were.

By Mr. Little:

Q. Well, Mr. Fyfe, with respect to the items upon which you said the ratings were all uniform, when you were given your instructions to unify with a meataxe, or with a broadaxe, as you say, were those ratings which were then uniform, in your judgment, determined with full reference to the list of principles stated?

A. With respect to the ratings, in so far as the Western Committee was concerned, I would say so unqualifiedly, [fol. 1222] yes, sir.

Q. Are you not prepared to say, with respect to the other Classification Committees also——

A. I could not testify for either the Official Classification Committee or the Southern Classification Committee.

Q. I see. You are unable to say, as to them.

A. No, sir. Unfortunately our Southern friends took a lot of those things, that were first class, and second class, and that were uniform in all of the territories, and made them second class and third class, without ever consulting us.

Chairman Aitchison: It is perfectly obvious, Mr. Little, that Mr. Fyfe ought not to be interrogated with respect to what was in the mind of somebody else.

Mr. Little: Well, if the Chairman please, the only reason that I asked the question was——

Chairman Aitchison: Now, do not debate it, please.

Mr. Little: My only point is——

Chairman Aitchison: Please go on to something else. Do not ask Mr. Fyfe to swear to what was in the mind of somebody else.

Mr. Little: The only point I had in mind, if the Chairman please, was this: Mr. Fyfe has testified that these committees have been meeting jointly, as I understand it, and

I thought perhaps he might have some information in the [fol. 1223] matter. That was all I had in mind.

Chairman Aitchison: Oh, he can tell what some other man may have said, but he certainly cannot tell what was in his mind.

By Mr. Little:

Q. Well, Mr. Fyfe, do you in the joint meetings of the three Committees, to which you have referred, refrain from all discussion of joint problems?

A. There is no joint problem element, except arriving at a uniform description of a particular commodity, uniform packing arrangements, or requirements, and a uniform minimum weight.

Q. All right.

A. The uniformity stops there.

Q. I see.

A. And then each committee announces what rating it thinks ought to go in.

Q. Now, Mr. Fyfe, in your judgment, after all of these years of experience, would you see any objection to having this same group of informed and able classification men, discuss at the same time the further question as to whether they should establish a uniform rating in all three territories, as well as uniformity to the limited extent that you have stated?

A. Well, we do discuss uniformity. We try to get uniformity, if the conditions are such that it can be done. [fol. 1224] As I pointed out to you before, in the case of new items, where a new item is going into the book, in 95 per cent of those cases you will find that the ratings are uniform, unless there is a competing item that the new item has got to be lined up with in some territory, where we might believe that a lower rating or a higher rating on the new item should be made. I thought I made that clear here before.

Q. To avoid any undue cross-examination on my part, Mr. Fyfe, as I understood your previous answer, it was that at the joint meetings of these committees there was considered everything, as to any problem of uniformity, except uniform ratings, but your latter answer indicates that you also consider uniform ratings. Now is that correct, or not?

A. Oh, as I stated before, we do try to get uniform ratings, yes, sir, if the conditions are such as will permit our making them; but each territory, as I have also stated before has jurisdiction over its own ratings.

Q. All right. Then is the lack of uniformity flowing from those meetings, based on differences of judgment with respect to these items which you have listed as the principles governing the making of a classification?

A. No, sir. They are primarily based upon differences in conditions, in the respective territories, I should say, and differences in the value or the price of the commodity.

[fol. 1225] Mr. Hughes: If the Commission please, it appears to me that we are wasting a considerable amount of time here, on non-essential matters.

Mr. Little: I do not think so.

Mr. Hughes: I have been hoping that Mr. Little would get on to something speedily that would have some meritorious bearing on the issue here. It strikes me that most of his questions have had relation to extraneous matters. I am reluctant to interrupt with an objection, but it would seem to me that his cross-examination could be very materially shortened.

Mr. Little: Well, if the Commission please, as I understand it, in Docket No. 28310, the sole issue is as to the lawfulness of the rail classification. Mr. Fyfe has testified as a witness here with respect to the effort of the committees, of which he is a joint member, to arrive at uniformity. He has stated the principles, and now I am simply inquiring of him as to the detail.

Chairman Aitchison: Let me rule, please. You may inquire as to matters of fact, and also of opinion, but please do not argue with the witness.

Mr. Little: I am certainly not trying to argue with the witness, your Honor. I am merely trying to arrive at the facts.

Chairman Aitchison: Then frame your questions, please, [fol. 1226] so that they will not have the appearance of arguing with the witness; and ask him for the facts, or for his opinion.

By Mr. Little:

Q. Now, Mr. Fyfe, in applying the Western Classification today, in your own territory, does it make any difference

in the ratings that you establish, as to whether the volume out of a particular point of origin is large or small?

A. No, sir. One reason for the organization of the present Classification Committee in the West, was to take away from the backs of the railroads, the pressure of the big shipper, so that the small shipper could get the proper consideration, as well as the large shipper.

Q. Now, Mr. Fyfe, referring to sheet 3 of your mimeographed statement, the portion under "Question No. 16," in the fourth paragraph: I wish you would explain the bearing of equal volume on the problem of classification.

A. Referring to the paragraph beginning: "If the tonnage originating in and destined to each territory"—and so forth?

Q. Right.

A. My opinion there is that if the tonnage originated in each territory was of the same character, you might talk about equality of classification. For instance, out of New England, you have your highly manufactured commodities, and you also get them out of Central Freight Association [fol. 1227] Territory. Now if all of the territory had an equal production of the higher-rated classification tonnage, in equal movement, in all territories, and an equal production of granger products, then you might talk about equality in ratings, and equality of classification. You know of course that your grain rates out in the West are lower than they are in Official Classification Territory. Now, if you are going to get equality, if equality is what you are after, let us get some equality on all of the traffic that we are going to save.

By Chairman Aitchison:

Q. Well, it comes down to this, then, does it not, Mr. Fyfe: You have testified that the classifications reflect, to a certain extent at least, not only the other transportation characteristics which you have enumerated, but also the commercial need with respect to the article itself. In other words, if it is a manufactured article, there is a need for a rating on the manufactured article which would not be found in an area where raw material was largely the product.

A. That is true.

By Mr. Little:

Q. Well then, Mr. Fyfe, when you referred to volume in your latter statement, you did not mean differences in the total tonnage moving in one territory as compared with another, did you?

A. Oh, no.

[fol. 1228] Q. Well, Mr. Fyfe, are you aware of the fact that there are very great differences in the ratings applicable in several portions of Western Trunk Line Territory, and as between the various classification territories, and within those territories at the present time,—arising from differences in the classification and the exceptions?

A. I am not familiar with that situation, no, sir. I know that you have different groups, 1, 2, 3 and 4, and when you get out into the sand hills, your rates are higher for equal distances than they are back in the territory where you have got the heavy tonnage movement. I know that, but I am not familiar with the situation you refer to, no. I understand, however, that you do make rates on airline, in Nebraska.

Q. That is not in issue here.

A. Well, I do not know.

Mr. Little: That is all.

Chairman Aitchison: Is there further cross-examination of the witness?

Mr. Smelker: I have several questions, Mr. Chairman.

Chairman Aitchison: Mr. Smelker.

By Mr. Smelker:

Q. Mr. Fyfe, the first factor named in your answer to Question No. 10, is weight per cubic foot. Now, is the matter of density important in classification, because it affects cost?

[fol. 1229] A. No. Your weight per cubic foot is your loading factor.

Q. And it has nothing to do with costs?

A. No.

By Chairman Aitchison:

Q. Why not?

A. As far as the Classification Committee is concerned, Mr. Chairman, we do not go into the cost of transportation.

The weight per cubic foot is an important factor, however, when you come to your load, because the greater the load that you get into a car, the greater your cost of your operation.

Q. That is because the ratio of your gross to your net tons is thereby increased, is it not?

A. Yes.

Q. So that it does affect the cost?

A. Yes.

By Mr. Smelker:

Q. Then you do not take into consideration, in making ratings, the matter of cost, in so far as density is concerned, do you?

A. Well, we have in the past, yes sir, especially in connection with some of the lighter-loading commodities. For example, we do not provide a carload rating for any commodity, less than 10,000 pounds, and that 10,000 pounds is our minimum basis, although we do know that certain commodities will not load anywhere near 10,000 pounds, but it is fixed to give us a reasonable minimum charge per car, just like we fix the minimum charge for 100 pounds. [fol. 1230] So that I would say that it is taken into consideration, when we get an item of that kind. Take a rate, for instance, from Chicago to Kansas City, a first class rate, which for a distance of 451 miles, will give us an earning of, say, $140 to $150; but that is not followed through, in connection with everything.

Q. Well, in developing costs of this nature, do you make use of any studies, cost studies, of any sort?

A. No, sir. I only made one cost study in my life, and it was like all the balance of all the cost studies that you gentlemen make. A good part of it was just theory. I made a cost study in the Southwest, to determine the difference between the cost of transporting state business and interstate business; and I rode all of the local freight trains, to take off the tonnage, to take off the money, to take the time, and everything else; but when I got down to the end of it—or when we got down to the end, we just had a lot of factors there that nobody could do anything with.

Chairman Aitchison: Well now, Mr. Fyfe, that really has nothing to do with it. We are talking about classification here.

The Witness: Well I am not making any cost study, Mr. Chairman, because I found out that it could not be done.

By Chairman Aitchison:

Q. Do you take into consideration obvious differences in cost?

[fol. 1231] A. I am sorry, but I did not get that.

(Question read.)

A. Oh, yes.

By Mr. Smelker:

Q. Well then, Mr. Fyfe, I take it from your answer that you more or less use a rule of thumb procedure.

A. Yes.

Q. I believe I understood you to say, Mr. Fyfe,—and if I am wrong, I would like to have you correct me, if you will, please,—that the bulk of the less than carload tonnage moves at third and fourth class rates. Is that correct?

A. That is my opinion—in Western Territory.

Q. Then where does the break come; can you tell us?

A. How is that again?

Q. Where does the break come? Between third and fourth class, or at third class, or where?

A. Oh, that I would not be able to say, without a complete check. I know that we have in Western Territory a large number of distribution points, where the movements out of those points consist largely of foodstuffs, feedstuffs, iron and steel hardware, fencing, and that class of traffic, from the wholesale jobbing houses, as compared with the movement of high-class traffic, like your electric refrigerator, machinery, and that sort of thing, into the smaller communities. Nobody can tell just exactly where the break [fol. 1232] would be, without making a very thorough check, and it would be different in different parts of the territory.

Q. Now in answer to Question No. 14, Mr. Fyfe, you state: "The column minimum weight should be the basis for carload or volume rating."

A. Yes.

Q. Should not consideration be also given to the actual average loading, in addition to the minimum?

A. If I understand your question——

Q. In other words, what I mean is this: It is a rather well-known fact that most carload shipments load higher than the minimum, is it not?

A. We recently, with the war situation coming on, issued a docket, proposing to increase a lot of carload of minimum weights, and we met with very violent objection. It is difficult, especially in these times, to increase any rate or any minimum weight.

Q. That is not my question, Mr. Fyfe.

A. (Continuing:) We are getting a great improvement in carloading by the voluntary cooperation of the shippers, but it is not practicable to make a general increase in the carload minimum weights to more nearly represent the average loading of the United States as a whole——

Mr. Smelker: That is not the question at all, Mr. Fyfe.

[fol. 1233] Chairman Aitchison: You are not answering the question at all.

The Witness: I thought I was.

Chairman Aitchison: No. His question is as to whether or not, when you come to fixing carload ratings, in addition to the minimum, do you take into account your experience, in that customarily a car is loaded in excess of the minimum.

A. No, sir. We would not do that, on the minimum weight.

By Mr. Smelker:

Q. But you think, do you, Mr. Fyfe, that consideration should be given to that fact?

A. Well, I do not think that you could give consideration to it, no, sir, for the reason that, in the heavily-populated district in the East, if you will take the average carloading on a given commodity in that territory, you will find that it is very much higher than the average carloading of the same commodity in Western Territory; and yet, on the other hand, I think that, when you get into grain, you will find that the loadings in the West, of grain, are far higher than they are in the East.

Q. Well, talking about Western Territory by itself, Mr. Fyfe, what would your answer be, if you knew the average loading?

A. "No."

Q. You would not take it into consideration?

[fol. 1234] A. No, sir. We could not maintain uniformity if we based it on the West. The East might have an entirely

different situation. In other words, you have got to get a minimum minimum, so to speak, and then depend on getting more.

Q. Are adjustments in the rail classification usually met by corresponding adjustments in the truck classification, by competing truck lines?

A. We have an arrangement with Mr. Jackson, of the American Trucking Associations,—and it is to the advantage of the rail carriers as well as the motor carriers—that we will furnish Mr. Jackson with a proof copy of every change that we make in our classification, and we endeavor to keep Mr. Jackson, and the National Motor Classification Committee informed of the changes that we are making, and the dates upon which the changes are being made; and if we make short-notice application to the Commission, we notify the American Trucking Associations of that, in order that they may act also, and take the same action as the Rail Classification Committees have.

Q. And then what happens, after you give them that notice?

A. They generally follow it.

Q. Is it your experience, Mr. Fyfe, that the rail and truck rates on competitive traffic, tend to be equal? For example will the rails either meet the truck rates, or the trucks meet the rail rates, over a period of time?

[fol. 1235] A. That I do not know. You will have to ask some of the rate men, to tell you that. However, I think, generally speaking, that they do attempt to keep up with each other, but to what extent they succeed, I would not be able to say.

Mr. Smelker: That is all.

Chairman Aitchison: Is there any further cross-examination of Mr. Fyfe? (No response.) Before Mr. Fyfe leaves the stand, Commissioner Alldredge has a matter.

Com. Alldredge: Mr. Fyfe, there has been opinion evidence of a conflicting nature here as to the extent to which the exceptions have broken down the primary classification; and in view of that, I am just wondering if we could find a better way to determine just what the situation is. Would it be possible for you to secure a list of the exception tariffs, with proper reference to them, so that they could be incorporated into this record as evidence?

The Witness: It would be very difficult for me to do that,

Mr. Commissioner. At this particular time, particularly, I would not like to undertake that job, much as I would be glad to meet your wishes in the matter, because I am up to my neck in this war work, handling all of this Army material, and I ought to be home, right now, instead of here.

Com. Alldredge: May I inquire of counsel for the car-
[fol. 1236] riers, then, if that could be done?

Mr. Hughes: If the Commission, please, speaking for the Western carriers, I can assure you that, in so far as the bureau tariffs are concerned, that can be done; but so far as the issues of individual carriers are concerned, scattered throughout the country, it is a task that I am not at all sure can be accomplished. However, of course, I will do my best to comply, although I cannot assure you that it will be complete.

Mr. Little: If your Honor please, in an exhibit which has already been distributed, and which I shall later introduce, there is reference given to the principal exceptions tariffs issued by agencies operating in the territory lying east of the Rocky Mountains. They are the principal agency tariffs. I believe there are about eight or ten of them.

Com. Alldredge: Well, do you think that is sufficient to show just what the extent of the departure from the primary classification, is?

Mr. Little: I think that those tariffs would show it. My exhibit, however, does not. I have only taken a few typical items, because it has been impossible to make a complete examination, with the force at my disposal.

Com. Alldredge: It occurred to me that that is an important matter, and it has been covered so far by purely
[fol. 1237] opinion evidence on both sides; and I am anxious to work out some way to determine the question more accurately.

Mr. Bee: We felt as you did, Mr. Commissioner, the importance of that subject, and we in the Southwest attempted to do that very thing that you have spoken of. We had in mind the same scope, and I think that we got 100 and some odd pages, but then when we tried to go back and get the supplements up to a certain date, and show which one of the territories a particular rating applied in, we found that we could not do it, within the realm of our financial or physical capacity. I think it can be done, but it would

be a huge task to make it so that it would be understandable to the average reader, or the average traffic man.

Mr. McCollester: Mr. Commissioner, we have had somewhat the same experience as Mr. Bee. Mr. Bell started out first to make an analysis—which has been distributed—of the classifications, and then it was our intention to proceed further, to the exceptions, but we concluded that it was a well-nigh impossible job, at least within any reasonable expectation of accomplishing it, and particularly so, in view of the shortage of manpower at the present time, and particularly of men who are capable of analyzing tariffs. To take the general agency issues alone, would give you nothing.

Com. Alldredge: Thank you.

[fol. 1238] Chairman Aitchison: You are excused, Mr. Fyfe.

(Witness excused.)

Mr. Hughes: If the Commission please, I ask that Mr. Fyfe's Nos. 68 and 69, be received in evidence.

Chairman Aitchison: Received.

(Exhibits 68 and 69, Witness Fyfe, received in evidence.)

Mr. Hughes: I just have one further statement, if the Commission please, and then we will have concluded the case for the Western carriers. I would like to have incorporated into the record, and I ask leave that it be done, by reference, the reports of the Commission in the Eastern Class Rate Investigation, the Southern Class Rate Investigation, the Consolidated Southwestern Cases, the Western Trunk Line Classification Investigation, and the Western and Southern Class Rate Investigation.

Chairman Aitchison: Are those the ones that Mr. Stanage was talking about?

Mr. Hughes: Mr. Stanage referred to some of them, but he was merely citing them at that time. I want to go further than that, and by reference incorporate those reports into this record. I have the volume and page numbers of them here, but inasmuch as they are rather standard and leading cases, I take it it is unnecessary to refer to them in that detail. They were the foundation of the class rate adjustment which is here under investigation, and therefore [fol. 1239] they present——

Chairman Aitchison: Oh, you need not argue the matter. They are our reports, and of course we will have to take notice of them.

Mr. Norman: What is the ruling, please?

Chairman Aitchison: I say, of course, we will have to take notice of them.

Mr. Hughes: Thank you. That, then, if the Commission please, completes the presentation on behalf of the carriers in the Western District.

Chairman Aitchison: A question came up, I am advised, before Examiner Carter, with respect to whether the traffic study which was made of less than carload traffic for one week in September of 1939, should be considered as in evidence, or be available for use by all parties in this proceeding. I do not think it has been put into the record as yet; it has not been offered. We understand that it is a part of a petition which was filed by the respondents, which has been referred to by Mr. Jensen repeatedly in his testimony, and of course the entire document should therefore be available for the use of any of the parties. It is in the docket of the Commission, and it hardly seems necessary to put it in as an exhibit, because of the wide circulation that has been given to it. Is that satisfactory?

[fol. 1240] Mr. Norman: That is satisfactory as far as I am concerned, yes, sir. The references that my witness made to it can be sustained, then, because it is in the record.

Chairman Aitchison: Yes. From whom do we hear next?

Mr. Gwathmey: Mr. Chairman.

Chairman Aitchison: Mr. Gwathmey.

Mr. Gwathmey: I have one additional witness to present for the Southern Rail Carriers, who was unable to be here when the other witnesses were put on earlier during the week. His testimony will relate exclusively to the rates to and from points in the Florida Peninsula, and I think he will take only about 15 minutes on direct. May I call him at this time?

Chairman Aitchison: Very well.

Mr. Gwathmey: Mr. Hinnant. I may say to your Honor that Mr. Hinnant's exhibit has no cover sheet index, but I will be very glad to supply it.

Chairman Aitchison: Well, it is not so long, that we really need an index, apparently.

C. L. HINNANT was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Mr. Hinnant, will you give your full name, residence, and railroad position, please.

A. C. L. Hinnant; Wilmington, North Carolina, assistant [fol. 1241] freight traffic manager, Atlantic Coast Line Railroad Company.

Q. With what particular feature of Mr. Jensen's testimony, or his Exhibit No. 7, will you undertake to deal?

A. Wholly with that portion thereof wherein he recommends that the Florida arbitraries be discarded.

Q. Do you refer now, Mr. Hinnant to what are commonly known as the Florida Peninsula arbitraries?

A. Yes.

Q. How did those arbitraries originate?

A. They were established under the decision of the Commission in the Southern Class Rate Investigation, Docket No. 13494.

Q. What will be the general purport and intent of your testimony?

A. To show that the conditions surrounding the handling of traffic to and from the Florida Peninsula, and the need of railroad service t the Florida Peninsular, have not changed for the better, at least, since the Docket 13494 scale was established.

Q. Have you prepared an exhibit for presentation here, consisting of 16 pages?

A. Yes, sir.

Mr. Gwathmey: We will ask that the exhibit be identified as No. 70.

[fol. 1242] (Exhibit No. 70, Witness Hinnant, marked for identification.)

By Mr. Gwathmey:

Q. Will you briefly explain please, Mr. Hinnant, what the first five pages of this exhibit show?

A. They show, for the years 1924 through 1940, the revenue results from operations of the three major Florida Peninsula railroads. It will be noted from page 2 that,

with respect to the Atlantic Coast Line Railroad for the year 1931 and subsequent, from page 3, with respect to the Florida East Coast Railway for the year 1927 and subsequent, and from pages 4 and 5, with respect to the Seaboard Air Line Railway for the year 1930 and subsequent, that there were deficits from operations for those roads.

Q. The next page of the exhibit, page No. 6, shows the extent to which the Florid- railroads have been, and still are, in the hands of receivers or trustees in bankruptcy, does it not?

A. That is right, yes, sir. It shows that for the years 1920 through 1939, and that there has been no change in 1940, from 1939. The Docket 13494 decision came out in 1928—or rather, the rates were made effective early in 1928, under that decision, and for 1927 and 1928 there were no Class 1 Railroads in receivership. Then from 1931 on down, about 50 per cent of the Class 1 mileage in Florida has been in receivership. That has been caused by economic [fol. 1243] conditions.

Q. Now turning to pages 7 to 10, inclusive, of the exhibit, Mr. Hinnant, do those pages show, for the Atlantic Coast Line Railroad Company certain statistics of operation over a period of years?

A. Yes, sir, they do. Pages 7 to 10 inclusive of the exhibit show, for each of the six states through which the Atlantic Coast Line Railroad operates, for the years 1925 through 1940, the revenue freight handled, the miles of road operated in each state, the average tons handled per mile of road, the average ton miles of revenue freight handled per mile of road, and the average freight revenue per mile of road.

Q. In other words, the usual data bearing upon density of traffic, and so forth; is that right?

A. Yes, sir, that is correct. And I would like to mention in particular the fact that the important line here is the one designated by the letter F, "Average ton-mile revenue freight per mile of road."

Q. The exhibit will show, will it not, how Florida compares with other southern states in that respect?

A. How Florida compares with the other southern states served by the Atlantic Coast Line Railroad, yes sir.

Q. Now turning to the next page, Page 11, does that display a somewhat similar showing in terms of percentages?

[fol. 1244] A. The first portion of this page brings forward what is shown on the preceding three pages, in terms of percentages, Florida being given 100 per cent, and the other states being related thereto. In the lower portion I have shown, for each of the states, taking the year 1925 as 100 per cent, how the tonnage has gone up or down,—and it has always been down since 1925—or rather, since 1926; but this is to show that the trend of traffic in Florida has been just about the same as in the other southern states, or southeastern states.

Q. And that fluctuation relationship with respect to the other southern states, has remained virtually the same, has it not?

A. Yes, sir, that is correct—since prior to the decision in Docket 13494.

Q. Now, Mr. Hinnant turning to pages 12 and 13 of the exhibit: I understand they present a similar showing for the Seaboard Airline Railway. Is that true?

A. Yes, sir, that is true, except here the figures for the several states other than Florida could not readily be segregated, so that we have Florida compared with Seaboard Airline System as a whole; but the showing is very much the same as that for the Atlantic Coast Line Railroad. Now, I wish to make a similar statement for account of the Florida East Coast Railway, the other south Florida major road, [fol. 1245] because that system operates wholly within the state of Florida.

Q. Yes, sir. Now, what do the remaining sheets of the exhibit show, commencing with sheet 14?

A. They purport to show that, on traffic handled within, to and from Florida as a whole, the empty car mileage is much greater in relationship to the total loaded car mileage, or total car mileage, than in the balance of the southeastern states served by the Atlantic Coast Line and Seaboard Airline Systems. The Florida East Coast Railway empty car miles and loaded car miles are also shown, and while the Florida East Coast Railway, as I stated before, does not operate outside of the state of Florida, I thought it well enough to show this information, because it shows it almost identically with the percentages that are shown for the state of Florida, for the Atlantic Coast Line. For some reason or other, I do not know why, in one or two instances

it does not show up exactly the same for the Seaboard Airline, but they are very close, as to all three.

Q. Is there any further comment you wish to make on this exhibit, Mr. Hinnant?

A. I would just like to mention the fact that while Mr. Jensen has suggested that the Florida arbitraries be waived, on the ground that they might be injurious to the rails serving south Florida, he for some reason or other did [fol. 1246] not make a similar suggestion concerning New England arbitrary territory, nor that territory in the upper peninsula of Michigan, both of which today have arbitraries over adjoining territory; in the case of New England, over the southern portion of New England; and in the case of the upper peninsula of Michigan, over the balance of Central Freight Association Territory. There are quite a number of similarities between upper New England and southern Florida. There is no overhead traffic, to speak of, that we can get to or from southern Florida, except that which may be exported or imported, usually to or from Cuba or the West Indies. In the upper portion of New England, likewise, there is very little overhead traffic, except the small amount that is brought in from Canada.

Q. Have you anything further to say about the exhibit?

A. That is all.

Q. Now, Mr. Hinnant, was this exhibit, which has been marked Exhibit No. 70 for identification, consisting of 16 pages, prepared by you or under your direction?

A. It was prepared by me, and under my direction, both, —yes, sir.

Q. Is it true and correct, to the best of your knowledge and belief?

A. Yes, sir.

Mr. Gwathmey: At this time, Mr. Chairman, we desire [fol. 1247] to offer Exhibit No. 70 in evidence, and ask that it be received.

Chairman Aitchison: Without objection, it is received.

(Exhibit No. 70, Witness Hinnant, received in evidence.)

Mr. Gwathmey: The witness is now tendered for cross-examination, your Honor.

By Chairman Aitchison:

Q. Mr. Hinnant, turn to page 3 of your Exhibit, please.

A. Yes, sir.

Q. Column 5 includes, does it not, income taxes, as well as other taxes?

A. Yes, sir. I understand that includes all taxes.

Q. And Column 6 reflects, does in not, the income taxes in Column 5?

A. Well now just let me look back on the other page a moment, please, sir. Yes, sir, it does; that is correct.

Q. And so does Column 7.

A. I understand that is correct.

Q. Column 8 relates to fixed charges.

A. Yes.

Q. I suppose, other than taxes.

A. Yes, sir.

Q. Where is your joint facility account?

A. That comes from four to six, does it not?

[fol. 1248] Q. What is that?

A. That should be in the total operating expenses,—4. It ought to be included in that.

Q. Well, what is the nature of the items which go to make up Column 8?

A. Interest on borrowed money, and so forth.

Q. Well, in this case, for the Florida East Coast Railway, those are which,—accruals, or payments?

A. I would not be able to say as to that offhand, sir. I would have to run that across here.

Q. You show elsewhere here that the Florida East Coast Railway Company is under reorganization.

A. You say, do I show——

Q. You do show that.

A. No, sir, I have not shown that it is under reorganization. It is under a trusteeship at the present time.

Q. You show it as in receivership.

A. Well, trusteeship, I believe it is.

Q. You say, receivership, on page 10.

A. Well, receivership, or trusteeship.

Q. How?

A. I use the term "receivership" as including either or both, including either receivership, or trusteeship.

Q. You do not mean to say, I take it, from this table, that those fixed charges were paid, do you?

[fol. 1249] A. Not necessarily so, no, sir. They certainly accrued, however.

Q. Well, they could scarcely be paid, in view of the deficit, could they?

A. No, sir. That is just what I was about to indicate.

Q. Very well. Now, look, please, if you will, at the Seaboard Airline. The same answers would be made, with respect to that, I take it. Is that correct?

A. The same answers—yes.

Q. Throughout.

A. Yes.

Q. Please look, then, at the last item in the second column, Total Property Investment, Cash, Materials, and Supplies, in the amount, approximately of $324,000,000.

A. Yes.

Q. Will you turn, then, to the Atlantic Coast Line Railroad. The comparable item is $293,000,000, is it?

A. That is what it shows there, yes, sir.

Q. Do you have any comment on that?

A. Well, I would say that the Atlantic Coast Line was a little better financed.

Q. You would say also, would you not, that the figure for the Atlantic Coast Line was closer to the value than the figure for the Seaboard Airline, considering the fact that one is in trusteeship, and the other is not, as well [fol. 1250] as the disparity in investment?

A. I do not believe that I am competent to say that one or the other is more near the actual value.

Q. I see.

A. The Seaboard Airline bought a lot of properties, and built a lot of properties a long while after the Atlantic Coast Line did. The Seaboard Airline is more nearly a new road than the Atlantic Coast Line is.

Q. You do not attempt to relate, then, your Column 2, in the first four tables, to value in any way?

A. No.

Chairman Aitchison: Cross-examine.

Mr. Gwathmey: If the Chairman please, before cross examination, I neglected to inquire as to Mr. Hipnant's qualifications. Perhaps I had better do that at this time,—unless these gentlemen are willing to admit them.

By Mr. Gwathmey:

Q. Will you do that at this time, please, Mr. Hinnant; just state briefly your experience in railroad traffic matters. [fol. 1251] A. I have been assistant freight traffic manager for the Atlantic Coast Lines since September, 1940. Prior to that I was general freight agent for approximately 11 years. My total railroad experience in the freight traffic departments of southern railroads, principally the Coast Line, is around 34 years.

Mr. Gwathmey: Thank you.

Chairman Aitchison: You may cross examine.

Mr. Hillyer: I have a few questions, Mr. Chairman.

Chairman Aitchison: Mr. Hillyer.

Mr. Hillyer: My name is F. C. Hillyer, Mr. Reporter, appearing for the Railroad Commission of Florida.

Cross-examination.

By Mr. Hillyer:

Q. Do I understand it is your position that there has been no improvement in the condition of the Florida carriers since the Southern Class Rate Investigation. No. 13494?

A. From a financial standpoint that is shown, I believe, by this exhibit.

Q. And that the trend is the same in effect as in the other states traversed by this line?

A. The trend up or down generally is the same; not necessarily the same percentage, but the fluctuation of business from year to year in Florida is approximately that of the other southern states.

[fol. 1252] Q. The Southern Class Rate Investigation rates including the Florida arbitraries went into effect in about 1928, did they not?

A. Either January or February, 1928.

Q. Was that about the time that your decline set in approximately?

A. No, sir. If you will look at Page 2 of Exhibit 2 you will see that for 1929 the Coast Line had a net income better than it did in 1928 or 1927. In 1930 which is the first year reflecting the influence of the crash of October, 1929, the net income of the Coast Line was way off and from that time on down through 1940, we have not had a net income.

Q. Is it your position that within a year or two or a few years after the Florida arbitraries became effective, the Florida lines began to go down in traffic and have continued to have unfavorable operating results because of the loss of traffic?

A. Not Florida alone. Bear in mind, please, sir, that the figures I have shown here are not the operations in Florida alone. They are the operations of the system. We did not have the arbitraries outside of Florida,

Q. In speaking about the lack of improvements since 13494, is it your view of this situation that the tonnage in Florida has been at about a standstill and a low ebb since [fol. 1253] about the year 1930?

A. No, sir.

Q. Is that not what you said, that there had been no improvement since 13494?

A. If I said there had been no improvement from Florida alone, I was probably wrong. There has been a considerable increase in tonnage originating in Florida and some increase in the tonnage terminated in Florida since 1927 and 1928; but also in that time there has been almost completely, the development of truck competition and there has been a great increase in water transportation to and from Florida up until the boats were taken off by the Government for other purposes.

Q. Is it true then that while the rail lines have continued in this trend which you have mentioned in Florida, that in the meantime the truck and water transportation has considerably increased?

A. Truck transportation to and from Florida has almost grown up in its entirety since that time. Water transportation, so far as fruit is concerned, has entirely grown up since that time.

Q. Have you made any effort to ascertain how much coal traffic has been originated and terminated in Florida during this period since about 1930?

A. You mean the total for all modes of transportation?

[fol. 1254] Q: Yes.

A? No, sir. Pages 8 through 10 and page 13 of my statement show how it runs for the Coast Line and for the Seaboard for several years. The Coast Line begins in 1925 and runs through 1940. The Seaboard begins in 1929 and runs through 1940.

Mr. Hillyer: No. I was speaking now of total transportation.

By Mr. Hillyer:

Q. You have not made any attempt to show what the total transportation has been during these years, have you?

A. No, sir, I have not. I do not know that I could possibly find what has gone into the state or out of the state by private truck. I do not see how I could.

Q. With respect to your exhibit, let us take page 2 for the Atlantic Coast Line Railroad.

A. Yes.

Q. You go through the year 1940.

A. Yes.

Q. Why did you stop with the year 1940?

A. Because that is the last normal year we have had.

Q. Did you not have available statistics for 1941?

A. Yes.

Q. Do you not know that there was a marked and tremendous increase in your tonnage and revenues in 1941 as [fol. 1255] compared with 1940?

A. Why, of course, I do, and of course I know what it is attributable to.

By Chairman Aitchison:

Q. Is there not a mistake in your exhibit on sheet 10?

A. 10?

Q. Yes. I am referring to 1940 now, line A, opposite Florida, the figure 676,807. Should that not be 6,768,000?

A. It should be 6,000,000 I think. Something must be incorrect with that.

Q. It could not have dropped off 5,000,000 tons originated in one year.

A. No, sir. There is some figure missing in front of that. I do not know just what that is, but C shows the total that was handled.

Q. C shows the total, and of course the total would only be about 2,600,000. You are about 600,000 off.

A. A should be the difference between B and C.

Mr. Gwathmey: If it is agreeable, we will undertake to have that corrected and advise the parties and the Commission at the next hearing.

Mr. Hillyer: We tried to check that error. We have not been able to do so. There is no obvious transposition of figures. You have to supply the correct figures from your records. I think there is no other way of doing it.

[fol. 1256] The Witness: I will be glad to supply that.

By Mr. Hillyer:

Q. As I understand it, under Column 2 on page 2 for the investment account you have used book investment entirely for each of these three lines;

A. That is correct.

Q. Is that right?

A. Yes.

Q. Do you know what the rate-making value used by the Commission is for the Atlantic Coast Line Railroad in comparison with the figures you have used here?

A. I have not the figures before me. They are in the record, though, most of them.

Q. I think they were shown to be——

A. Around $210,000,000.

Q. $212,000,000?

A. $210,000,000 or $212,000,000.

Q. The use of those figures would change your rate of return materially, would it not?

A. It would increase the rate of return, no doubt. It would be bound to increase it, of course, but it would not bring it up very high.

Q. Have you calculated that to see?

A. No, sir, but even if you cut the last one, 1941, in half, you would only double the rate of return. That would not be very high.

[fol. 1257] Mr. Hillyer: I do not think that would hold true in that ratio. I think you would have to check that figure.

Chairman Aitchison: Proceed.

By Mr. Hillyer:

Q. I spoke of 1941 and an increase in traffic.

A. Yes.

Q. Is it not a fact that in the year 1942 there has been an enormous increase in traffic for the Florida lines over 1941?

A. Absolutely, and also for the lines in the other southern states. It is all brought about by war conditions and is not a temporary proposition at all—I mean, it is not a permanent proposition. It is temporary. At least, we hope so.

Q. As part of those war conditions, has there been a cessation of water transportation generally in Florida?

A. Pretty much so.

Q. Has there been a curtailment of trucking operations of various kinds?

A. To some extent, yes, sir. Not nearly so much, though, as the water. The water is almost wholly out, but not entirely so. We have one river line that operates on the inland waterway. We have some water transportation along the Gulf, or at least we did until very recently. I do not know just what the situation is today. But the trucks, we [fol. 1258] believe, are more and more unable to transport at a saving under rail cost by reason of——

Chairman Aitchison: We do not need to go into that. We know what is going on.

By Mr. Hillyer:

Q. On Page 6 you refer to lines in receivership or trusteeship or reorganization. You include the Georgia & Florida Railway. How many miles of road of that line are in Florida, the Florida Peninsula territory south of the Jacksonville-River Junction Line?

A. 13.

Q. How much?

A. 13.

Q. How many miles of the St. Louis-San Francisco Railroad in Florida are in Florida arbitrary territory?

A. None in Florida arbitrary territory.

Q. How many miles of the Georgia & Florida Railroad in Florida are in Florida arbitrary territory?

A. You just asked that. I said 13.

Q. Excuse me. I meant to say, the Louisville & Nashville Railroad.

A. None of that is in arbitrary territory, and none of it is in receivership.

Q. On Page 13 in the lower right-hand column under Florida you show that for the Seaboard Airline Railway, the average revenue tons per mile of road were 4,625 tons; that

[fol. 1259] is under F, the next to the last line to the right under the heading of Florida for 1940.

A. Yes. That is the average tons per mile of road of revenue freight.

Q. At average revenue tons per mile, is it not, per mile of road?

A. That is right. That is the same thing.

Q. Now, is that correct? Did the average for Florida exceed the average of the Seaboard's entire system?

A. That is right, but that, you notice, is under the tons per mile of road, while the tons per mile of road, that is opposite G, for the year 1940, were 518,000 for Florida as against 790,000 for the system for the Seaboard including Florida.

Q. On Page 16 you show your percentage of empty to loaded movement.

A. Yes.

Q. That is refrigerator cars.

A. Yes.

Q. Down at the bottom the Seaboard has 80.6.

A. That is right; for 1940.

Q. Do you not consider that is a pretty good performance for perishable traffic in that territory?

A. Fairly good, yes. It was formerly a bit more than that for the refrigerator cars.

[fol. 1260] Q. Would you say that figure is substantially different for Georgia, for example?

A. No, sir.

Q. So Florida would not be substantially different from other states so far as empty return refrigerator cars are concerned?

A. Very little different, in the amount. It will run from 80 to 85 per cent, or 75 to 85 per cent, usually.

Q. Do you now apply the Florida arbitraries on classes 1 to 7 for hauls within Florida south of the Jacksonville-River Junction Line?

A. On intrastate traffic, we do not, sir.

Q. Did you take those arbitraries out voluntarily?

A. We did, in an effort to meet motor truck competition, private carrier motor truck competition.

Q. Have you found it was impractical to apply the arbitraries on classes 1 to 7 within Florida due to competition?

A. That is correct. We could have made a percentage reduction in the whole thing with the same result.

Q. Then why do you say you disagree with Mr. Jensen, when he says that the Florida arbitraries have been the source of injury rather than benefit to the Florida carriers? Is is not true that they have been a source of injury rather than benefit?

[fol. 1261] A. It is not true, sir. They have been a source of benefit as far as arbitraries apply, on a great deal of the traffic that still continues to move to and from Florida. We have not removed the Florida arbitraries on class rate traffic interstate.

Mr. Hillyer: That is all I have.

Mr. Walker: I would like to make a brief statement if the Commission would indulge me at this moment.

Chairman Aitchison: While this witness is still on the stand?

Mr. Walker: No; after he is withdrawn.

Mr. Smelker: I have one question.

Chairman Aitchison: Mr. Smelker.

By Mr. Smelker:

Q. Can your Exhibit No. 70 be used to determine the amount of the disability in Florida without a showing of the unit expenses within and without the state?

A. Will you repeat the question please? I did not hear the last part.

Q. I say, your expense within and without the state, in addition to your traffic statistics.

A. What do you mean by "unit of expense"?

Q. I mean the cost per gross ton mile and other expenses of the same character.

A. We have no cost studies in Florida for the separate units. It is impossible to get it.

[fol. 1262] Q. Then there is not much of a chance to use your exhibit in so far as the cost of operations in Florida by itself is concerned?

A. No, sir. You cannot find the cost of operation in that exhibit, and I do not think anybody can find it in any other one.

Q. Do the Florida arbitraries accrue solely to the Florida Lines?

A. They are supposed to, sir. We sometimes get those

Florida arbitraries in one way and sometimes in another. I mean, sometimes they are deducted specifically before prorating. Other times our percentage of the through rate will be enhanced which may give us slightly more than that or slightly less. However, the Florida arbitraries do accrue solely to the Florida lines.

Mr. Smelker: That is all.

Chairman Aitchison: Are there any other questions of this witness? (No response.) If not, you are excused.

(Witness excused.)

Mr. Walker: May it please your Honors, yesterday in answer to a question from the bench as to evidence offered on behalf of the Pocahontas Lines, Mr. Healy stated that the evidence offered on behalf of the Official Lines included the Pocahontas Lines. I would like to elaborate on that statement to the extent of calling attention to the [fol. 1263] fact that in the Eastern Class Rate Investigation the rates therein prescribed were prescribed for application over the Pocahontas Lines as well as over all other lines in Official Territory; and in responding to the order of investigation in this proceeding the Pocahontas Lines having the same level of rates as all other Official Lines see no reason to make a separate presentation, but they participated in the evidence that was offered on behalf of the Official Lines as a whole, and that evidence was offered on their behalf as well as all other lines within Official Territory.

Mr. Gwathmey: Mr. Chairman, I understand that the railroads as a whole have now completed their testimony at this hearing. They will, of course, have additional testimony to offer at the adjourned hearing.

Mr. Bell: I would merely like the record to show that it was impossible to get Dr. Duncan here until October 1st, so Dr. Duncan will appear, so far as the carriers' testimony is concerned, at the further hearing.

Mr. McCollester: May I just say, since the number of counsel is dwindling, that we have distributed at this hearing in accordance with the grouping and the instructions regarding the groups, copies of an exhibit prepared by Mr. Charles E. Bell. It is a large exhibit consisting of an analysis of the classification. If there are any who have [fols. 1264-1265] not gotten their copies I wish they would let me know, but I want to tell everybody that since they

have been distributed here, we are not going to bring their copies to the next hearing. We will have a few available at the next hearing, but we cannot undertake to duplicate the distribution made here.

Chairman Aitchison: That, of course, has to be observed with respect to all these exhibits that have been distributed in advance of the presentation. It is done both as a matter of fairness and also courtesy. We ought not to expect to go home and then have additional copies supplied at the forthcoming hearing. We will now suspend until 9:30 Monday morning next, at this place.

(At 5:05 P. M., Saturday, September 26, 1942, hearing adjourned until 9:30 o'clock A. M., on Monday, September 28, 1942.)

[fol. 1266] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28300

Class Rate Investigation, 1939

Docket No. 28310

Consolidated Freight Classification

Claypool Hotel,
Indianapolis, Indiana,
September 26, 1942.

Met pursuant to adjournment at 10 o'clock A. M.

Before Paul O. Carter, Examiner.

APPEARANCES:

As heretofore noted.

PROCEEDINGS

Exam. Carter: Come to order, gentlemen. Be sworn, Mr. Thornton.

E. H. THORNTON was sworn and testified as follows:

Direct examination:

The Witness: My name is E. H. Thornton. I am general Manager of the New Orleans Joint Traffic Bureau, New Orleans, Louisiana. The New Orleans Joint Traffic Bureau

[fol. 1267] is a civic organization representing all of the commercial shipping interests as well as the city and port of New Orleans in all matters pertaining to transportation. My testimony will deal primarily with the rates via ocean-rail and rail-ocean-rail routes through New Orleans and the Texas ports of Houston and Galveston, as contrasted with the all-rail rates.

I have had in excess of 30 years' experience in rate and traffic work in the southwest with the railroads and with shippers' organizations. I have participated in many proceedings before this Commission in connection with general rate investigations, general rate cases, including the Consolidated Southwestern Rate Cases, which also included the ocean-rail section of the Consolidated Southwestern Rate cases, known as Docket 14880, which was consolidated with Docket 13535 and related proceedings.

At the outset I wish to state that at the present time we have no coastwise steamship services operating between the North Atlantic ports on the one hand and New Orleans and other gulf ports on the other. The steamship lines who formerly operated regular service, regular coastwise service, between the North Atlantic and the gulf ports, have been called upon to turn their vessels over to the Government for war purposes and war uses. I cannot say at this time and no one can say at this time when these coast-[fol. 1268] wise lines expect to or will resume services. Of course, we all hope and believe that these coastwise lines will resume service soon after the war ends, and perhaps before, if they get their ships back from the Government. Formerly there were operating regular and dependable coastwise steamship services between New Orleans on the one hand and Boston and New Bedford, Massachusetts, New York, Philadelphia, and Baltimore on the other. Likewise, there were regular dependable coastwise steamship services formerly operated between the Texas ports of Galveston and Houston on the one hand, and Norfolk, Virginia; Baltimore, Maryland; Philadelphia, Pennsylvania; New York, New Bedford and Boston on the other. As stated, however, those services have been discontinued for the reasons I mentioned.

In the Consolidated Southwestern proceedings, particularly the ocean-rail section known as the 14880 proceeding, which was part of the Consolidated Southwestern proceedings, in the 21st and 25th Supplemental Reports this Com-

mission prescribed joint through ocean, ocean-rail and rail-ocean-rail rates between Eastern Trunk Line and New England territories on the one hand, and points in the Southwest on the other.

Mr. Barron: Do you mean the 21st or 23rd and 25th Supplemental Reports? The 21st was the all-rail adjustment was it not?

[fol. 1269] The Witness: The 25th?

Mr. Barron: The 23rd and 25th.

The Witness: The 23rd and 25th. That is correct.

Mr. Barron: Yes.

The Witness: I will stand corrected.

Exam. Carter: Proceed.

The Witness: As to the Mississippi Valley territory, the Commission has never, so far as I know, prescribed any joint through rates between Eastern Trunk Line and New England territories on the one hand, and the Mississippi Valley on the other via the ocean-rail routes. There were some rates voluntarily established and maintained via certain ocean-rail carriers which reflected a differential under the all-rail rates. These joint through rates applied, however, only to that portion of the Mississippi Valley on and south of the Illinois Central, extending from Vicksburg to Jackson, Mississippi, and we had no joint through rates to the territory north of that line via ocean-rail routes. There were, however, prescribed in the Docket 13494 proceedings, known as the Southwestern Class Rate Investigation, joint through all-rail rates, as well as joint through ocean-rail rates through the South Atlantic ports, namely, from Norfolk, Virginia, south to Jacksonville, Florida, between Eastern Trunk Line and New England territories on the one hand, and the Mississippi Valley territory on the other. [fol. 1270] But, as stated in that proceeding, the Commission did not deal with or prescribe any joint through rates via the Gulf route from and to the same points.

If in this proceeding the all-rail rates are to be reduced between Eastern Trunk Line and New England territories on the one hand, and the Mississippi Valley and the Southwest on the other, which are served by the routes through the ports of New Orleans and the Texas ports, then we are urging that the rates via the rail-ocean-rail and rail-ocean routes through the Gulf ports be likewise treated and adjusted, using the same formula or scale as may be used

in fixing the all-rail rates from and to the same points. We feel and believe that unless the ocean-rail rates are adjusted and fixed at the same time that the all-rail rates are adjusted and fixed in this proceeding, the resulting effect upon our coastwise services will be disastrous. The ability of the coastwise lines to resume operations after the close of the war will be very problematical. We are fearful that the coastwise lines and the gulf ports will be confronted with an all-rail rate structure which will be lower in level than the ocean-rail rate structure, and as a consequence, of course, the ocean-rail routes will not handle any business where the rates are the same or higher than the all-rail rates.

From our long experience, it has been demonstrated that the coastwise lines must have a differential in rates under [fol. 1271] the all-rail rates in order to participate in the traffic in competition with the all-rail routes. In this case we are not advocating or urging a reduction in the all-rail rates to or from the states of New York, Pennsylvania, West Virginia, Virginia, and states east thereof, which I may, for convenience here, call the Eastern Trunk Line and New England territories. Of course, I can only speak for New Orleans. I cannot speak for shippers and receivers located at any other point except New Orleans. With normal transportation conditions prevailing, we look to and rely upon the coastwise steamship lines who operate regular and dependable steamship services between New Orleans and North Atlantic ports previously mentioned, to provide us with low-cost transportation service and rates commensurate with this service. Such rates are generally no higher than the level applying on lake traffic moving within Eastern Trunk Line and New England territories for comparable hauls or for comparable transportation services. The steamship service operated by these coastwise lines to and from New Orleans and also to and from other Gulf ports, is of material and substantial importance and benefit to the manufacturers, shippers and receivers located not only at the port cities, but at interior points contiguous thereto. That applies both to the southwest and the Mississippi Valley as well as the New England and Eastern Trunk Line territories.

[fol. 1272] I have three exhibits which I wish to have identified at this time. I want to explain to some of you who may have the first distribution of my exhibits, that there

is a loose page headed "Table of Distances in Nautical, Statute and Equated Mileage Between Representative North Atlantic and Gulf Ports". That will be known as page 12 of my first exhibit. On the exhibits that were distributed this morning, the single sheet has already been attached to the first exhibit which I will introduce. I just wanted to get that straight before we started discussing it.

Exam. Carter: Off the record.

(Discussion outside the record.)

Exam. Carter: Back on the record.

The Witness: May we have these three exhibits marked for identification, Mr. Examiner?

Exam. Carter: They may be marked for identification as Exhibits Nos. 71, 72 and 73.

(Exhibits Nos. 71, 72 and 73, Witness Thornton, marked for identification.)

Exam. Carter: Proceed.

The Witness: My Exhibit No. 71 is a table of short line distance factors to be used in constructing first class rates under formulas proposed by Witness C. G. Jensen, in his Exhibit No. 7, introduced at the July 10-11, 1941, hearing in these proceedings. I have selected as representative, [fol. 1273] origin and destination points in Eastern Trunk Line and New England territories as follows: Albany, New York. Pittsburgh, Pennsylvania. Boston and Springfield, Massachusetts. The exhibit shows the representative points in Louisiana, Texas, Arkansas—Kansas is shown by mistake and may be eliminated—and Oklahoma, that I have selected in applying this formula.

In this Exhibit No. 71, I have shown the short rail distances from the origins named ir the Eastern Trunk Line and New England territories to the nearest rate-making North Atlantic port. I have also shown the short rail distances from both New Orleans and from Galveston and Houston to representative points in the Southwest, namely, Texas, Arkansas, Louisiana, and Oklahoma. For the water distances I have equated the distances, the nautical and actual statute mileages, by the use of 3.6 water miles being equivalent to one rail mile. The authority for the use of that equated factor is shown—I will give you the authority for that equated factor later—and was used by the Commis-

sion in the Consolidated Southwestern Cases and Tex-Arkan Flour Mill Cases, reference to which proceeding I will give later.

Exam. Carter: Off the record.

(Discussion outside the record.)

Exam. Carter: Back on the record.

The Witness: The citation of the Tex-Arkan Flour Mill [fol. 1274] Case is 241 I. C. C. 257 and 258. The citation of the Consolidated Southwestern Cases is 23rd Supplemental Report, reported in 211 I. C. C. 601. In addition to those citations, I wish to also cite the following cases, in which the Commission referred to various other equated factors, water versus rail distances: Agwi Lines versus the Akron C. & Y. Ry. Co., Docket 27969, 248 I. C. C. 255 at page 266. Southwest Shippers' Traffic Association versus the Atchison, Topeka & Santa Fe Railway Company, et al., 24 I. C. C. 570, 583. Reduced Rates from New York Piers, I. C. C. 81, 312, 323.

In applying the Jensen formula via the ocean-rail routes equated distances obtained under the method and plan shown in my Exhibit No. 71, I treated the equated ocean distances as described, as in 105 per cent territory, or treated that as the same as the rail haul in Eastern Trunk Line and New England territories. There is no previous Commission authority for so treating that haul. The Commission has never, so far as I know, indicated whether the ocean-rail haul, or the ocean haul, equated ocean haul between the Atlantic and Gulf ports, should be treated as equivalent to a rail haul in Eastern Trunk Line and New England territories or as equivalent to a rail haul in Southern territory or equivalent to a rail haul in Southwestern territory. In other words, so far as the Commission is concerned, the reports are silent on that subject. I should point out here [fol. 1275] that on page 12 of Exhibit 71, I have shown the actual nautical miles between North Atlantic ports and representative Gulf ports including New Orleans, Galveston and Houston, and have increased those nautical miles to the statute miles; and as heretofore stated, have equated the statute miles by the use of the factor of 3.6. The authority for the nautical miles shown on page 12 of my Exhibit No. 71 is shown at the bottom of the page.

My Exhibit No. 72 is a statement comparing the present published first class rates, not including the Ex Parte 148

increases, with resulting first class rates constructed under the formulas presented by Witness C. G. Jensen in his Exhibit No. 7, introduced in these proceedings, to representative points in Arkansas and Louisiana located on and east of the Kansas City Southern Lines; also to representative points in Mississippi and to Baton Rouge, Louisiana, and Memphis, Tennessee, all-rail as well as rail-water-rail and via water and rail routes through New Orleans from Pittsburgh, Pennsylvania, Albany and New York, New York, Boston and Springfield, Massachusetts, which points I have selected as being representative of the Eastern Trunk Line and New England territories. Except as noted on this exhibit, the differences shown in the last column under each heading are differences in favor of the Gulf route. I have heretofore explained the method used in applying the Jensen formula via the rail-ocean route. On this exhibit, on [fol. 1276] pages 15 and 16, I show the all-rail routes and junctions used in applying the Jensen formula in constructing the all-rail rates under that same Jensen formula.

As stated at the outset, we are asking this Commission to prescribe via the rail-ocean-rail routes through not only New Orleans, but also through other Gulf ports, the same adjustment that it finally decides to prescribe via all-rail. If the Jensen formula is to be used, then we have shown on page 72 what rates should be prescribed via the rail-ocean and ocean-rail routes through New Orleans to representative destinations in the territory where the route through New Orleans is the rate-making route via the coastwise lines. In my Exhibit No. 71 I showed the distances from, to and via the Texas ports of Galveston and Houston to representative points in Texas and Oklahoma, where the rate-making routes via coastwise lines will be through either Galveston or Houston, so as to give the Commission an opportunity to check in the rates via the Galveston-Houston route to that territory in the southwest where the Galveston-Houston route may be the rate-making route. I did not figure the actual rates. I was in hopes that the ports of Galveston and Houston would have done so.

Mr. Byars: You do show the distances, though?

The Witness: Yes, and the rates under the Jensen formula can be obtained very readily by the application of the for- [fol. 1277] mula to the distances shown there in Exhibit 71. In Exhibit No. 73, consisting of 7 pages, I have shown comparisons similar in some respects to the comparisons shown

in Exhibit 72, except in Exhibit 73 I have shown a comparison of the first class rates, present, and under the Jensen formula, via New Orleans as well as via Galveston and Houston, via the coastwise routes to a few representative points in the southwest located on and north of the Texas & Pacific Railway. I have selected Dallas, Texas, Muskogee, Oklahoma, Oklahoma City, Oklahoma, Shreveport, Louisiana, and Texarkana, Arkansas. The routes and junction points used in figuring the all-rail rates under the Jensen formula are shown on pages 3 to 7 inclusive. I have previously explained in detail the routes and distances and junctions used in applying the Jensen formula via coastwise routes through both New Orleans and the Texas ports. That information is shown in detail on my Exhibit No. 71.

At this point I wish to point out that the Government is now constructing a large fleet of cargo vessels for use at present in war transportation and war purposes. We are confident that if and when this war ends, these cargo vessels are going to be made available by the Government to private steamship operators at what Mr. McCollester said yesterday in the examination of Witness Robinson of the Union Pacific, were bargain prices. We know that following World [fol. 1278] War No. 1 the Government had on hand a large number of cargo vessels, which the Government disposed of to private operators at very cheap prices. Vessels that cost the Government as much as $2,000,000 to construct were sold to private operators for as little as $50,000, and on very liberal terms. We are fully confident that similar provisions will be made for the distribution and disposition of these Government boats after the second World War, to private operators, and a number of those boats will find their way into coastwise transportation services between the North Atlantic ports on the one hand, and all Gulf ports, particularly New Orleans, Galveston and Houston, on the other.

If and when these coastwise lines resume their services, we are very anxious to see and have a rate structure that will enable those coastwise lines to handle traffic between Eastern Trunk Line and New England territories on the one hand, and the Mississippi Valley and the Southwest on the other. Unless the Commission prescribes in this proceeding an adjustment in the rates, whether class or commodity or both, via the ocean-rail routes at the same time it prescribes an adjustment in the all-rail rates from and to the points mentioned, we are very fearful that the

all-rail rates in most cases will be lower than the existing rail-ocean or ocean-rail rates through New Orleans and other Gulf ports, and that under such an adjustment of [fol. 1279] rates as I have mentioned—as I have just mentioned—the coastwise lines will be prevented from handling any traffic from and to the points that I have heretofore described. The Gulf ports are very much interested in this matter and we beg and ask the Commission to prescribe rates via the ocean-rail and rail-ocean-rail routes just the same as if we now had normal services.

The Commission has, in two recent cases that I participated in, stated that rates should be prescribed via ocean-rail and rail-ocean-rail routes just the same, treating those routes as if they were now normally operated. I refer to the proceeding in I. & S. Docket 4815, known as the Iron Pipe Case, and to the most recent case involving rates on rice from Louisiana and Texas to North Atlantic ports, I. & S. Docket 5086, I think it is. I will give you the correct reference in a few minutes.

By Mr. Thompson:

Q. That is also true, is it not, Mr. Thornton, of the ocean-rail divisions case, Docket 28969, to which you referred?
A. Yes, sir.

By Mr. Barron:

Q. Is that the Agwi Lines Divisions Case you are talking about?
A. Yes, sir.

Exam. Carter: Is there anything further, Mr. Thornton?
Mr. Thornton: I think that completes my direct testi-[fol. 1280] mony.

Exam. Carter: Do you desire to offer in evidence Exhibits 71 to 73 inclusive?

The Witness: Yes. I offer my Exhibits 71 to 73 both inclusive in evidence.

Exam. Carter: Is there any objection to the receipt of these exhibits in evidence? (No response.) If not, they are received.

(Exhibits Nos. 71, 72 and 73, Witness Thornton, received in evidence.)

Exam. Carter: Is there any cross-examination?

Mr. Walker: I would like to ask one or two questions for clarification.

Cross-examination.

By Mr. Walker:

Q. Refer, please, Mr. Thornton, to your Exhibit No. 72.

A. Yes.

Q. To what extent were the rail and water or rail-water-rail differentials shown there prescribed by the Commission?

A. Mr. Walker, the Commission in prescribing the through rates via the the ocean-rail routes—I am speaking of the Southwestern Decision, the 23rd and 25th Supplemental Reports—specifically stated, as I recall, that it was not attempting to fix a differential, rail-ocean-rail versus all-rail.

Q. Well, with respect to the——

[fol. 1281] A. While they had the all-rail rates before them, they did prescribe rates that were lower via rail-ocean-rail than all-rail.

Q. Well, were these rates prescribed, both rail and water and all-rail rates, between the points shown on your Exhibit No. 72?

A. To and from points in the Southwest, Mr. Walker, but not to and from the Mississippi Valley.

Q. I understand that, but these are mostly Southwest points.

A. Yes. You will find, however, Mississippi Valley points are shown on pages 11 to 13 inclusive.

Q. 11 to 13?

A. Yes.

Mr. Walker: Let me see, now. Let's be a little more specific.

By Mr. Walker:

Q. Take page 9.

A. Of this Exhibit 72?

Q. Yes.

A. All right.

Q. Those all-rail rates that you show there from Springfield to points in the Southwest I assume are prescribed in the Consolidated Southwestern Cases.

A. Yes, subject to the increases up to Ex Parte 148.

Q. Yes.

A. We did not include the Exparte 148 increase.

[fol. 1282] Q. Were these rail-water-rail rates also approved or prescribed by the Commission?

A. Yes, sir.

Q. Now, do I understand that in these proceedings you are asking the Commission to increase those differentials to the extent shown on this exhibit?

A. Yes. Mr. Walker, we have never been satisfied with the differences in favor of the coastwise lines; we have never been satisfied that those differences were properly reflected in the Commission's decision in the 23rd and 25th Supplemental Reports, and I might state at this point that the Commission on our petition and other petitions reopened the ocean-rail section of the Consolidated Southwestern proceedings and had about a two weeks' hearing in the south on it. I do not know whether you participated. I think your firm did.

Q. Yes.

A. That case is now pending. Director Hardie heard the reopened proceeding.

Q. Still referring to page No. 9 of Exhibit No. 72, take Crowley, Louisiana.

A. Yes.

Q. As I understand it, the Commission either prescribed or approved both all-rail and rail-water-rail rates from Springfield, Massachusetts, to Crowley?

A. That is right.

[fol. 1283] Q. Which resulted in a difference in favor of rail-water-rail of 51 cents per hundred pounds?

A. The Commission prescribed it, yes.

Q. Now in this case you are asking that the differential be increased rail-water-rail under all-rail to $1.36 per hundred pounds?

A. Mr. Walker, in this case I am asking the Commission to use the same formula or same scale in fixing rates via the ocean-rail route as they use in fixing the all-rail rates. Whatever differences result from that scale in favor of the ocean-rail route we feel we are entitled to.

Q. Well, the result of your proposal is to increase the prescribed differential, or difference, from 51 cents to $1.36 rail-water-rail under all-rail?

A. You might say that the result of the application of the Jensen formula is as I have applied it here, and that would be the best description.

Q. Your answer as to Crowley would be the same as to all other points on the exhibit?

A. Yes.

Mr. Walker: That is all.

Exam. Carter: Are there any other questions?

Mr. McCollester: I have a few questions, Mr. Examiner.

Exam. Carter: Mr. McCollester.

By Mr. McCollester:

Q. Mr. Thornton, in order that I may correctly under-
[fol. 1284] stand your position, you do not advocate the application of the Jensen formula to either the all-rail or rail-water-rail, do you?

A. No, sir, but if they are going to use that formula or any other formula in reducing all-rail rates, we want the same formula applied via rail-ocean-rail routes and whatever differences are reflected via the rail-ocean-rail routes by that formula, we are certainly entitled to via the Gulf route.

Q. You do not favor any change in the all-rail rates?

A. I so stated. We are not urging it, and I stated the reason why, because we have already a much cheaper route via rail-ocean-rail. I am speaking only for New Orleans. I cannot speak for anybody else.

Q. If you were applying the Jensen formula to your rail and water routes, why did you put the water portion in 105 per cent territory rather than in 100 per cent territory under Mr. Jensen's formula?

A. Mr. McCollester, I concluded that the water portion of the haul in my judgment was the most economical portion and I thought that it was being more than fair to put it in 105 per cent territory considering the fact that there is no terminal cost between the North Atlantic and the Gulf ports.

Q. But the excuse for the 105 per cent given by Mr. Jensen was the more favorable, as he thought, operating conditions in Central Freight Association territory. There are
[fol. 1285] certainly no mountains on the water route, are there?

A. He gave 100 per cent to the Central Freight Association territory.

Q. Yes.

A. I did not apply 100 per cent to the water route.

Q. If you had applied 100 per cent to the water route——

A. I would have gotten a different figure.

Q. —you would have increased the spread under the rail rates?

A. That is right.

Q. So far as the future is concerned, you spoke about the possibility of the war fleet coming into coastwise service. The situation under the law is, is it not, at the present time, that the Maritime Commission cannot dispose of the war fleet at bargain prices of the same sort that were employed following the last war?

A. That may be true, Mr. McCollester, but you and I know what happened following the last war. Pressure can be brought to bear to change that law overnight.

Q. But you are not in a position to prophesy with any definite knowledge upon which this Commission can act, as to what Congress will do, are you?

A. Oh, no.

Q. Is not that very uncertainty in the coastwise situation one of the reasons which makes it impossible to deal with [fol. 1286] the whole north and south rate structure at the present time?

A. Well, that is a very important element there. We do feel and believe there will be coastwise services established following the termination of this war. To what extent we will have that service will depend upon our rate structure, and the competition of all-rail routes.

Q. But it is impossible at the present time to predict the conditions under which that coastwise service can be operated, is that correct?

A. That is true, Mr. McCollester. They are out of business today because the Government took their boats. We do not know when they will get them back. Some of them have been sunk already.

Q. Is it not your position that the ports like New Orleans and the Atlantic Seaboard are interested in the rail-water rates as well as in the all-rail rates and that one should not be changed unless a proper change can be made in the other?

A. That is right, but if the Commission is going ahead in this proceeding and fix all-rail rates, we want to put what evidence we can before the Commission urging them to also fix rates——

Q. I understand that, but I am trying to get you to say that the uncertainties in the coastwise trade are a good reason for the Commission not doing anything to the all-rail rates.

[fol. 1287] A. I would not want them to treat with one, without treating with the other.

Mr. McCollester: That is all I have.

Exam. Carter: Are there any other questions?

Mr. Barron: I have a question or two.

Exam. Carter: Mr. Barron.

By Mr. Barron:

Q. You stated that the Commission in certain cases have used 3.6 as the equating factor to determine water miles versus rail miles.

A. Yes.

Q. Did you mean that?

A. Yes.

Q. They have actually used 3.6?

A. Well, they have referred to it, although I do not say they approved it.

Q. They have also used an average distance, water distance, of 600 miles from the Atlantic ports, the North Atlantic ports, to the Gulf ports, have they not?

A. Not to New Orleans. I think they did in the Corpus Christi case. They grouped the Texas ports, including Corpus Christi, at 600 miles, but they did not group New Orleans in that. That is what you had in mind, I guess.

Q. Inasmuch as the Commission has treated with the all-rail rates as well as with the rail-ocean-rail rates and the rates are so now that they reflect a differential, rail-[fol. 1288] ocean-rail under all-rail, you do not see any reason why that should be changed at this time, do you, Mr. Thornton?

A. Mr. Barron, I believe I stated on direct that we are not satisfied with the differentials reflected under the rates prescribed by the Commission via rail-ocean-rail compared with rates prescribed all-rail. For that reason we petitioned to have the Commission reopen the ocean-rail sec-

tion of the Southwestern Rate Cases. That case was reopened, and I think you participated in it.

Q. Yes.

A. Director Hardie heard it. There has never been any final hearing or final decision, however.

Q. Now, that was not in 13535 or I. & S. 3130 that that was reopened, was it?

A. The ocean-rail section was reopened and further hearing had. We made the complaint and presented extensive testimony in support of our complaint that the differentials were wrong via the ocean-rail route as compared to the all-rail route.

Q. Are you talking about 13535?

A. The ocean rail section. It is 14880.

Q. That is the original case, but that has been decided. The ocean-rail rate has been decided in 13535.

A. Correct, and the ocean-rail section has been reopened and is now still pending. It has been pending for two or three years.

[fol. 1289] Q. Only in so far as Docket 14880 is concerned?

A. That is the ocean-rail section.

Mr. Barron: We will let that speak for itself.

By Mr. Barron:

Q. In your Exhibit No. 73 you show various rates from New Orleans, Galveston and Houston, to, as you say, representative destinations in the Southwest.

A. I said a few representative destinations.

Q. Yes.

A. That is correct.

Q. Now, those first class rates from New Orleans do not apply by all routes, do they?

A. No. I do not think the Santa Fe participates in them.

Q. They were rates that were put in by a certain line to equalize the Gulf ports, were they not?

A. The rates I show here are not equalized rates. I do not show the equalized rates.

Q. Do you have a present rate from Pittsburgh to Dallas of $3.11?

A. Oh, yes.

Q. Was that a prescribed rate?

A. No. Those are rates that were voluntarily established by the T. & P. Railroad and the L. & A. Railroad.

Q. The same is true as to your rates up into Oklahoma, is it not?

[fol. 1290] A. No. Into Oklahoma the Commission prescribed the rates.

Q. All of them?

A. Yes. We have no voluntary rates in Oklahoma, class rates.

Q. Do you not have voluntary rates that were established by the L. & A., the Kansas City Southern and some of the other Oklahoma lines?

A. From New Orleans?

Q. From New Orleans, I am talking about.

A. Not through. Where the Houston combination makes less than the through rate, the L. & A., the T. & P. and certain of their Oklahoma connections equalized, but the joint through class rates were prescribed as shown on this exhibit.

Mr. Barron: That is all I have, thank you.

Exam. Carter: Are there any other questions?

Mr. Bee: I have one or two questions.

By Mr. Bee:

Q. Mr. Thornton, did the Commission make port-to-port rates from these New York ports to the Texas and Louisiana ports?

A. Yes, involving rail service beyond the docks.

Q. What was the rate from New York to New Orleans?

A. The Commission did not prescribe any rate—they first prescribed a rate in the Southwestern revision, which was the same as the port-to-port rate prescribed from New York to Houston and Galveston docks, but later, in the later decision, I think the 23rd Supplemental Report, the Commis-[fol. 1291] sion withdrew that and the New Orleans rates that were previously prescribed.

Q. But they left it in to the Texas ports?

A. The prescription, yes.

Q. You would be asking for a combination rate, according to your Exhibit No. 72, of rail-ocean-rail to Morgan City, Louisiana, as an example, that would be lower than the Commission prescribed for a port-to-port rate from New York to Texas ports?

A. No. We want the Commission to prescribe port-to-port rates, too. I did not show those on this exhibit. I can give them to you very readily, if you want them.

Q. I would like to know what you asked to have prescribed.

A. I want the Jensen formula applied to the ports as well as to points beyond the ports.

Q. And the same differential under it?

A. Whatever the Jensen formula makes.

Q. You mean, based on 3.6 miles of ocean to one of rail?

A. That is right. Whatever the Jensen formula fixes, that is what I want.

Q. What about the terminal charge of 25 cents in the Jensen formula? Would that apply?

A. That is included in the formula and fixed in the rates.

Q. You would not want to cut that down by the amount of that terminal charge?

[fol. 1292] A. I did not do that in the application of the formula.

Mr. Bee: That is all I have.

Exam. Carter: Are there any other questions?

Mr. Byars: I have one or two questions, Mr. Examiner, if you please.

Exam. Carter: Mr. Byars.

By Mr. Byars:

Q. Did not the Commission fix the same port-to-port rate, New York to Galveston and Houston and New Orleans?

A. In the first decision, 123 I. C. C.

Q. They followed that in the Bull Steamship Line Case in fixing through rates from the east to the southwest, did they not?

A. In the Bull case, they did not fix any rates to New Orleans. They fixed some rates via New Orleans to Louisiana via Lake Charles, and Beaumont.

Q. Did the Commission change that in a subsequent supplemental report, where orignally they prescribed the $1.70 rate from New York to New Orleans, Lake Charles, Houston, Galveston and Texas City?

A. They did not change it in so far as the prescribed rate to Lake Charles, Galveston, Houston and Beaumont was concerned, but the Commission did withdraw its order prescribing the rate to New Orleans in the 23rd Supplemental Report in that same case.

[fol. 1293] Q. Did that have the effect of makkng the rate lower from New York to New Orleans by water than from New York to Galveston by water?

A. No. The coastwise lines in agreement amongst themselves continued to apply the same coastwise rate to New Orleans port as applied to Galveston and Houston. We did not at that time raise any objection because of the competitive situation.

Q. But the Commission did in the 14880 section of the 13535 proceedings fix the joint water and rail rates into the Southwest so that New Orleans had a differential in its favor as against the other Gulf ports to certain territory about underneath the line of the Kansas City Southern Railroad, did it not?

A. They prescribed—I would not say "a differential". They prescribed the same rate via New Orleans as they prescribed via Galveston and Houston to Shreveport, Texarkana and Muskogee, Oklahoma.

Q. East of that——

A. East of that the rates prescribed via New Orleans were slightly less than the rates prescribed via Galveston and Houston. West of there they prescribed lower rates via Galveston and Houston than via New Orleans.

Mr. Byars: Yes.

By Mr. Byars:

Q. Is it your suggestion that if the Jensen formula is [fol. 1294] used, whatever difference that makes in the differential for and against the Houston-Galveston route, or for and against the New Orleans route, that is what you want?

A. So far as prescription is concerned; but I still maintain that the carriers themselves, if they desire to voluntarily equalize one port route as compared with another, should be permitted to do so.

Q. Yes.

A. I am not asking the Commission to prescribe equalization.

Mr. Byars: That is all.

Exam. Carter: Are there any other questions?

Mr. Grubbs: I have one or two questions, Mr. Examiner.

Exam. Carter: Mr. Grubbs.

By Mr. Grubbs:

Q. You stated you represented the New Orleans interests?

A. Yes.

Q. I take it by that you meant the shippers of New Orleans?

A. Yes, and the port interests, the city and everybody that deals in transportation.

Q. Your organization has been very alert in the matter of securing rate adjustments that you felt were needed by the interests you represent?

A. We do the best job that we can.

Q. Not only for the benefit of existing shippers, but also [fol. 1295] for the benefit of prospective shippers?

A. Oh, yes.

Q. Now, you have expressed the concern that you have for the welfare of the coastwise water carriers which, of course, is quite natural.

A. Yes.

Q. I will ask you if the present time has not brought acutely to your consciousness the importance and the benefit to the shippers of New Orleans of the rail carriers.

A. Oh, yes. Rail carriers are very important factors today.

Q. You are anxious, I take it, that the rail carriers be as efficient as possible?

A. Absolutely.

Q. You want them to adequately meet every need, both today and in peace times.

A. Yes.

Q. Is that not true?

A. Yes.

Q. To be adequate not only for these times, but also in times of peace when the traffic may be much less, you realize that the railroads must be strong, do you not?

A. We are very anxious to see them strong and continue strong.

Q. You do not want them weakened by anything that may be done in this proceeding, do you?

[fol. 1295a] A. No. I do not want to see the railroads weakened in this or any other proceeding if I can help it.

Mr. Grubbs: I will ask you just this one final question, Mr. Thornton:

By Mr. Grubbs:

Q. You studied Mr. Jensen's exhibit, and you doubtless read this statement: no readjustment of class rates should be required which would diminish the aggregate revenue of railroads in any section.

A. Yes.

Q. Do you agree with that?

A. Well, the railroads are fully capable of taking care of themselves in this proceeding. I do not advocate any adjustment of rates that will weaken the railroads' position, financial position. We want strong railroads serving New Orleans.

Mr. Grubbs: Thank you.

The Witness: That means financially.

Mr. Grubbs: Thank you very much.

Exam. Carter: Are there any other questions?

Mr. Tanner: I have one or two questions, please.

Exam. Carter: Mr. Tanner.

By Mr. Tanner:

Q. Mr. Thornton, as I understand your position, it is first that you are dissatisfied with the present relationship in all-rail versus ocean-rail routes, is that correct?

A. I would not say that was our first position. Our first [fol. 1296] position is the fear that the Commission will, as a result of this proceeding, reduce the all-rail rates and not treat with the ocean-rail rates which will place our coastwise lines at a serious disadvantage.

Mr. Tanner: Well, I will ask it this way:

By Mr. Tanner:

Q. Is it your position that at the present time you are dissatisfied with the relationship existing between the all-rail route rates and the ocean-rail route rates?

A. In some respects, yes. We have never been satisfied, and have so stated to the Commission in our petition to reopen the 14880 proceedings. We feel that a different yardstick was used in fixing all-rail rates as compared to fixing ocean-rail rates via New Orleans and the Texas ports.

Q. You would not care whether the relationship that you desired was accomplished in this proceeding or in 14880, would you?

A. We do not want to see two separate orders. We know what that means. We have been up against that. We know how friendly the so-called eastern carriers are to the coastwise lines. They are very friendly in not joining the coastwise lines to make any reductions when rates are reduced. It takes an order from the Commission in a proceeding requiring concurrence. If you give us the first order first, it is all right.

[fol. 1297] Q. You are opposed to the issuance of an order by the Commission in this proceeding changing the charges that are involved?

A. All-rail?

Q. Yes.

A. I am, unless and until they also issue an order making a like change in the rates via the ocean-rail routes from and to the territories I have been describing, in which we are interested.

Q. If they do issue an order reducing the all-rail rates along with the rates through the Gulf ports, are you opposed to it?

A. No. That is the reason I put in my exhibits.

Mr. Tanner: That is all.

Mr. Norman: I have one question.

Exam. Carter: Mr. Norman.

By Mr. Norman:

Q. The rail-lake rates are made on basis of 90 per cent of th[illegible]-rail rates, are they not?

A. I think in the northern section of the country they have a structure made based 90 per cent of the all-rail rates.

Q. That would not be satisfactory in your case, would it?

A. No, because our water haul represents a greater proportion of the total haul than the Great Lakes water haul does, in our opinion.

Q. Therefore, you think 90 per cent would not be right?

[fol. 1298] A. No. You understand, Mr. Norman, that while I have submitted an exhibit showing the results of the application of the Jensen formula, I am not advocating rigid mileage rates. I think the carriers should make reasonable groupings.

Mr. Norman: Let me ask you this final question:

By Mr. Norman:

Q. You said that in the event the Eastern Trunk Line and New England all-rail rates were reduced, you would want the reduction applied on the formula which you give to the rail-ocean-rail rates?

A. If the Commission uses this formula. If they use some other formula, then I want my rail-ocean-rail rates applied on that formula, or the same yardstick.

Q. Assume as a result of this case the rail rates might be raised: what would you want in that case?

A. If they found that those all-rail rates had to be raised and the same yardstick applied to our route, then I suppose we would have to take the raise also.

Mr. Norman: That is all.

Exam. Carter: Are there any other questions on cross-examination?

Mr. Thompson: I have one question, Mr. Examiner.

Exam. Carter: Mr. Thompson.

By Mr. Thompson:

Q. In answer to a question by Mr. Tanner, you said you are willing to have the all-rail rates reduced under the Jensen formula if you got a corresponding reduction in the [fol. 1299] water rates.

A. I said, if the all-rail rates were reduced. He asked whether I would object to it if the all-rail rates were reduced under the Jensen formula and the rail-water rates were reduced under the Jensen formula. Of course I would not object.

Q. I understood your last answer was that you were advocating a reduction in the all-rail rates.

A. No.

Q. Did I misunderstand you?

A. You misunderstood me, yes.

Mr. Thompson: That is all.

Mr. Barron: May I ask one more question, Mr. Examiner?

Exam. Carter: All right.

By Mr. Barron:

Q. Mr. Thornton, do you advocate that each Gulf port should be given the benefit of its geographic location?

A. No.

Mr. Barron: Thank you.

The Witness: I think the rail and water carriers should be free to equalize as policy dictates.

By Mr. Barron:

Q. As freely as the rail routes equalize one route via another?

A. Yes. There should be the same freedom.

Mr. Barron: That is all.

[fol. 1300] Exam. Carter: Are there any other questions of Mr. Thornton? (No response.) If not, you are excused.

(Witness excused.)

Exam. Carter: Call the next witness.

Mr. Norman: Call Mr, Creighton.

Exam. Carter: Raise your right hand and be sworn.

W. S. CREIGHTON was sworn and testified as follows:

Direct examination.

By Mr. Norman:

Q. Will you state your full name for the record, please, Mr. Creighton.

A. W. S. Creighton.

Q. Your address?

A. 121 West 4th Street, Charlotte, North Carolina.

Q. What is your occupation?

A. I am Traffic Secretary and Manager of the North Carolina Traffic League.

Q. Have you had long experience in traffic matters?

A. Something over 40 years.

Q. You have appeared and testified in many cases before the Interstate Commerce Commission?

A. Yes, quite a few.

Q. Have you prepared a statement of your testimony to be offered in this proceeding?

A. Yes, sir.

[fol. 1300-A] Mr. Norman: Mr. Examiner, this statement of Mr. Creighton's testimony has been distributed.

By Mr. Norman:

Q. By the way, Mr. Creighton, have you prepared an exhibit to accompany this testimony?

A. I have prepared an exhibit, one exhibit consisting of four pages, to accompany the testimony, yes, sir.

Mr. Norman: We ask that that be marked for identification as the next exhibit, if the Examiner please.

Exam. Carter: It may be marked for identification as Exhibit No. 74.

(Exhibit No. 74, Witness Creighton, marked for identification.)

By Mr. Norman:

Q. Mr. Creighton, was this exhibit prepared by you or under your direction?

A. Yes, sir.

Q. Is it correct to the best of your knowledge and belief?

A. Yes, sir.

Q. Please present your statement for the record, the statement of your testimony.

A. On January 9, 1940, the Commission issued an order requiring each Class I railway which reported more than one million dollars of freight revenue received from less than carload traffic in 1937 to make, and preserve until further notice, a record of each freight shipment terminated by it on certain specified days—the items of information to [fol. 1301] be recorded for each shipment were to be those specified in the order, and subject to the instructions set forth in the Commission's order. The date fixed by the Commission for furnishing the information was May 15, 1940.

On April 19, 1940, respondents, Class I carriers, filed a petition with the Commission seeking a modification of the Commission's order to the extent of relieving them from the requirement of making and preserving the information specified. To their petition was attached an appendix, which consisted of copy of letter of July 31, 1939, of vice-presidents Cleveland and Bunnell, of the Association of American Railroads, to chief traffic officers and chief accounting

officers of Class I railroads, which outlined in detail the method of conducting a study, known as the Merchandise Report, which was made for the Merchandise Committee of the Association of American Railroads, together with a statement in 19 parts headed "Analysis of LCL Traffic", which shows the results of that study, and four charts, with accompanying memorandum which summarized the revenue and tonnage distribution of intraterritorial traffic within Official and within Southern territories by mileage blocks. The period covered by the Merchandise Report was for the week of September 8-14, 1939, inclusive. Distribution by mileage blocks of 100, 200, 300, 400, 500, and over 500 miles were made within Official and within Southern territories only.

[fol. 1302] Class I railways, in their petition of April 19, 1940, for modification of the Commission's order of January 9, 1940, said that they "do not pretend that the information developed by the study which is herewith submitted is as complete as might be desired if all practical considerations are to be disregarded."

As a result of respondents' petition the requirements in the Commission's order to furnish the information was postponed from time to time until November 25, 1940, at which time the Commission issued its order rescinding that portion of its order of January 9, 1940. That Merchandise Report, filed as an appendix in the respondents' petition of April 19, 1940, constituted a large part of the foundation of Witness Jensen's study filed as Exhibit No. 7 in this proceeding.

Exhibit G, Part 15, Page 9, of the Merchandise Report, shows the details for Official territory, and Exhibit G, Part 16, Page 9, of the Merchandise Report shows the details for Southern Territory. The figures on Sheet 1 of my exhibit have been taken from these two sheets of the Merchandise Report. According to the Merchandise Report, the average rate of all less than carload class and commodity traffic for the test period is 68.6 cents per 100 pounds in Official territory, and 50.5 cents per 100 pounds in Southern territory. These average rates, however, while they may be the average [fol. 1303] rates covering all less than carload class and commodity traffic that moved during the test period within Official and Southern territories, are not fairly comparable for the reason that the average distance of haul is not shown and it is clearly apparent from an examination of the study

that the average rates referred to do not cover even approximately the same average distances of haul in the respective territories. To illustrate: on shipments weighing less than 10,000 pounds, in Official territory, 26.4 per cent of the tonnage moved within the first 200 miles, while in Southern territory 49 per cent of the total tonnage moved within the first 200 miles: In Official territory 28.28 per cent of the total tonnage moved for distances over 500 miles, while in Southern territory only 13.37 per cent of the total tonnage moved over 500 miles.

Of shipments weighing 10,000 pounds and over, 25.68 per cent moved within the first 200 miles in Official territory; while in Southern territory 70.7 per cent of the total tonnage moved for distances less than 200 miles; and in Official territory 26.07 per cent of the total traffic moved over 500 miles, while in Southern territory only 1.97 per cent of the total traffic moved over 500 miles. Hence, as previously stated, it is clearly apparent that the average distance of haul in the respective territories is not the same, and it would be unfair to compare an average rate of 68.6 cents [fol. 1304] per 100 pounds in Official territory with a rate of 50.5 cents per 100 pounds in Southern territory.

In Exhibit No. 7, in Chapter IV, entitled "Comparison of Actual Rates Charged in North and South on Like Kinds of Class Traffic", Witness Jensen says: "Certain data collected by the Association of American Railroads as to less than carload traffic during the week which ended September 14, 1939, are of significance in this connection."

The witness then proceeds to say that the average distance of haul in Official territory is 380 miles, in the South 220 miles, without showing where he obtains the figures representing the average length of hauls in the respective territories. Then he proceeds to make equations in order to get average rates in the respective territories for comparable distances, as follows: North, average haul, 380 miles. Average rate, cents: 68.6. Per cent of first class, 64.7. Northern distance equated to southern distance (220 miles): Rate in North, 54.3 cents. Rate in South, 50.5 cents. Excess of northern over southern rate, 7.5 per cent. South: Average haul, 220 miles. Average rate, cents: 50.5. Per cent of first class, 43.1. Southern distance equated to northern distance (380 miles): Rate in North, 68.6 cents. Rate in South, 65.7 cents. Excess of northern over southern rate, 4.4 per cent.

It will be observed, in the case of each comparison, where [fol. 1305] corresponding distance of haul is observed in each territory, that Witness Jensen shows the northern rate to be in excess of the southern rate. Immediately following the above equations Witness Jensen proceeds, at page 35, to discuss excess of southern first class over northern first class rate: at 220 miles, 39.6 per cent. At 380 miles, 43.7 per cent.

At page 36 of his paper, Witness Jensen says: "The A. A. R. report throws no light on the composition of the traffic by commodities in the two territories. It is, however, well known that during the second week of September in each year a large amount of country cotton moves in less than carload freight service to compresses in the south."

Witness Jensen follows this statement by pointing out that a great deal of commodity traffic moves in the south which has no counterpart in the north, such, for example, as cotton, fertilizer, leaf tobacco, grain and grain products.

At page 39 of his exhibit Witness Jensen makes the following equation:

Miles	% Distribution of Tonnage			Average Rates		% Southern Rate is of Northern Rate
	North	South	Composite North and South	North	South	
0–100 [fol. 1306]	9.9	22.9	16.4	32.0	33.9	105.9
100–200	16.2	29.2	22.7	47.0	43.8	93.2
200–300	17.0	17.1	17.1	58.2	59.7	102.6
300–400	15.6	11.6	13.6	66.2	77.0	116.3
400–500	13.2	7.3	10.2	74.5	100.1	134.3
Over 500	28.1	11.9	20.0	98.5	128.6	130.6
					Average*	—111.7

* Weighted for composite distribution of tonnage in each mileage block.

That equation purports to show that the Southern average rate is 11.7 per cent higher than the northern average rate. And at page 40 of his exhibit, Witness Jensen says that: "Summing up, it may be said that the A. A. R. report indicates as a reasonable approximation that on less than carload traffic, commodity for commodity and mile for mile, the rates in the south are more than 5 per cent but less than 15 per cent higher than those in the north."

Witness Jensen then suggests that the south be divided by drawing a line beginning at the Mississippi River, running thence through northern Tennessee and northern

North Carolina to the Atlantic Ocean; that north of that line the line haul rates should be 110 per cent of his basic scale, and south thereof 120 per cent of the basic scale.

Turning now to my exhibit: Sheet 2 redistributes the [fols. 1307-1308] total Official territory tonnage into the mileage blocks indicated, based upon the Southern per cents, multiplying the new weights thus obtained for the several mileage blocks by the average rate in Official territory as shown on Sheet 1, and having obtained new charges the total weight is divided into the total charges arriving at a total average rate for Official territory of 56.2 cents per 100 pounds to cover the class and commodity traffic moving within Official territory by redistributing the total tonnage in that territory on the basis just explained. This average rate of 56.2 cents per 100 pounds, obtained in the manner which I have just explained, is the rate which is fairly comparable with the average rate of 50.5 cents per 100 pounds for Southern territory as developed in the Merchandise Report.

On Sheet 3 of my exhibit, the total Southern tonnage is redistributed into the mileage blocks indicated, using the per cents for Official territory, and having obtained the proportions of weight in each mileage block in accordance with the Official per cents the new weights are multiplied by the appropriate average Southern rate thus obtaining the new Southern charges, whereupon the total Southern tonnage is divided into the total charge arriving at a total average rate of 68.2 cents per 100 pounds to cover the less than carload class and commodity traffic moving in Southern territory during the test period by redistributing on [fol. 1309] the basis indicated above. This rate of 68.2 cents per 100 pounds for Southern territory is fairly comparable with the rate of 68.6 cents developed in the Merchandise Report as representing the average rate in Official territory.

Sheet 4 of my exhibit shows that in Official territory, shipments weighing less than 10,000 pounds amounted to 91.3 per cent of the total traffic moving in Official territory; shipments weighing more than 10,000 pounds amounted to only 8.7 per cent of the total traffic moving within Official territory. In the South, shipments weighing less than 10,000 pounds amounted to 59.6 per cent of the total less than carload traffic; and shipments weighing more than

10,000 pounds amounted to 40.4 per cent of the Southern tonnage.

At the bottom of sheet 4 of my exhibit it will be observed that when comparing like distances of haul the average rate in Official territory is 56.2 cents per 100 pounds, obtained as explained on Sheet 2 of the exhibit, contrasted with the average rate in the South of 50.5 cents per 100 pounds, which was developed in the Merchandise Report; and that 68.2 cents per 100 pounds, obtained as explained on Sheet 3 of my exhibit, is the average Southern rate to compare with 68.6 cents per 100 pounds in Official territory, developed in the Merchandise Report. Thus it appears that when reconciling the differences in average haul in [fol. 1310] the respective territories the Southern average rate is not higher than the average rate in Official territory.

Since the Merchandise Report was made, effective September 1, 1940, the carriers made many downward revisions in the rates applicable to less than carload shipments. That revision to a large extent makes moot the showing made in the Merchandise Report.

Witness Jensen's conclusions are based so much upon the so-called Merchandise Traffic Study that attention should be called to some of the defects therein: 1. The Merchandise Traffic Study does not cover an average week. It embraced the week which ended September 14, 1939. During that week a greater number of cars of revenue l. c. l. freight were shipped than in any other week during that year. The average number of cars shipped per week that year was 150,595; whereas during the week ended September 14, 1939, there were 162,856 merchandise l. c. l. cars loaded. Statistics furnished by Car Service Division, Association of American Railroads. The Merchandise Traffic Study being for one week, it does not take care of seasonal variation.

2. During September there is a very large movement of cotton, tobacco, fertilizer, and grain moving at l. c. l. commodity rates in the South but not in the North, and not throughout the year, as conceded by Witness Jensen.

3. The Merchandise Traffic Study is not usable to com-
[fol. 1311] pare commodity with commodity.

4. By use of the Merchandise Traffic Study you cannot separate traffic moving on class rates and ratings from that moving on exceptions or commodity percentages.

5. By use of the Merchandise Traffic Study you can not ascertain the actual relative class rate levels.

6. Actual mileages were not obtained by the Association of American Railroads from the railroads. The only mileages used were in the 100-mile blocks up to 500 miles and beyond 500 miles constituted another block.

7. In determining into which 100-mile block a given shipment should be placed, the railroads applied the first-class rate between the points under consideration to the eastern scale. This did not produce accurate mileage. To illustrate, consider shipments moving within, to, or from New England: The first class rates applicable thereto are higher than in other parts of Official territory. Those high first class rates applied to the lower Official territory base scale threw many rates into the wrong mileage block.

8. Mr. Jensen had to use many assumptions, and so forth, to arrive at his average distances. His average hauls are very much longer in the north than in the south. Below are Mr. Jensen's average hauls; the average hauls derived by Mr. A. V. Vallandingham, of the Commission's [fol. 1312] Bureau of Statistics, in his summary of replies to questionnaires directed to all Class I steam railways at the request of the Senate Committee on Interstate Commerce in connection with Senate Resolution 146, 76 Congress 1st Session; and the average miles per revenue ton per road set forth in Bureau of Statistics M-220:

Jensen's average haul	South	North
Class l. c. l.	270 (33)	380 (33)
Commodity	190 (35)	380 (35)
Combined	220 (35)	380 (35)
Combined with 30 per cent of commodity	246 (38)	380 (35)
Vallandingham (Senate Resolution 146)		
L. C. L. traffic	275* 283#	262
Forwarder carload traffic	442* 433#	390
L. C. L. and forwarder combined	279* 287#	288
Bureau of Statistics (All traffic)		
1940	202.7*	
	223.5#	158.8
1941	203.9*	
	219.8#	164.4

Figures in parenthesis refer to page of Witness Jensen's Exhibit No. 7.
* Southern region exclusive of Pocahontas Region.
# Southern district including Pocahontas Region.

In conclusion: With the average rates applicable to less than carload traffic being shown to be no higher in

[fol. 1313] the South than in the North under Mr. Jensen's own theory there can be no justification for higher class rates in the South than in Official territory. By revising the class rate structure in the eastern half of the United States so that the unjustified differences in first class rates will be gotten rid of, differences in classification ratings removed, and differences in percentage relationships of the lower classes to the first class in official and southern territories done away with, there will be no need for southern carriers to resort to the establishment of innumerable commodity rates and classification exceptions in order to produce a basis which will permit the movement of class rated traffic, which the present basis of class rates does not permit.

Mr. Norman: We offer in evidence Exhibit No. 74, if the Examiner please.

Exam. Carter: Is there any objection to the receipt in evidence of Exhibit 74?

Mr. Cotterill: This exhibit presents an opportunity to obtain a ruling on a matter which is vexing a number of the counsel in the case and therefore in order to obtain the ruling, and for no other purpose, I respectfully submit an objection to its receipt.

Mr. Norman: To the Exhibit's receipt?

Mr. Cotterill: Yes. The basis of the objection is that down at the bottom of it in the left-hand corner, an au-[fol. 1314] thority reference is made to the Merchandise Report from which, I am informed, the intent is to make reference to certain statistical data gathered by the Association of American Railroads. I am told that some time in the past the commission addressed a communication to the railroad interests in this proceeding on the subject of traffic tests and they were met with the response by the railroads that there were practical reasons why they did not deem it consistent to meet that request. They transmitted to the Commission that American Association report as a substitute, and the order which had originally sought the traffic test, or the direction which originally had sought the traffic test was thereupon revoked. Counsel are unable to recall any formal treatment of the status of that material as part of the record in this case. It was referred to by Witness Jensen in his testimony and has been twice referred to by railroad witnesses.

I am informed by our accountants that for certain purposes of their own, they need to make reference to that material. We therefore would like a ruling as to whether that material is in evidence and may be used by any party in the case in the way Witness Creighton does or not. We personally hope it may be, but this is the opportunity and the means of obtaining a ruling.

Exam. Carter: I will take that question up with the Division, and I assume the chairman will make an announce-
[fol. 1315] ment.

Mr. Cotterill: May I make a further factual contribution to your deliberations.

Exam. Carter: Yes.

Mr. Cotterill: I am informed that when the railroad interests undertok to prevail upon the Commission not to go forward with these proceedings, they filed a document—we will call it a motion or a pleading—in which there are recitals embodying this A. A. R. material. Now, perhaps if the document filed then by the railroads be regarded as a pleading in the case, it might happen that under the new rules of practice that material becomes part of the record. If I am correctly advised, the new rule provides that any factual matter recited in a pleading becomes part of the record unless challenged.

Mr. Barron: Those rules certainly do not become retroactive.

Mr. Cotterill: I do not know. That is one of the disturbing questions that I am not advised about.

Mr. Barron: They certainly could not be.

Mr. McCollester: May we be off the record, Mr. Examiner?

Exam. Carter: Off the record.

(Discussion outside the record.)

Exam. Carter: On the record.

[fol. 1316] Mr. Norman: May I make a statement for the record, please, Mr. Examiner?

Exam. Carter: Yes, Mr. Norman.

Mr. Norman: I have proceeded on the theory that this study, if it could be called such, is part of the record. Certainly if it is not, then much of Mr. Jensen's testimony is incompetent. It was filed with the Commission in response to a request for certain information by the Commission and it seems to me that it is clearly part of the record.

I may say, however, that this witness is attacking the showing and undertaking to show it is not representative and that sort of thing. So far as I am concerned, I have no particular desire to have it part of the record, but it seems to me that if the Jensen testimony is to be retained, it must be made part of the record if it has not already been done.

Exam. Carter: Is there any cross-examination of Mr. Creighton?

Mr. Barron: I would like to ask the witness one or two questions, if I may.

Mr. Walker: I have a few questions.

Mr. Barron: Go ahead, Mr. Walker.

Exam. Carter: Proceed, Mr. Walker.

By Mr. Walker:

Cross-examination.

Q. Mr. Creighton, on page 9 of your prepared statement you refer to Vallandingham's Report.

[fol. 1317] A. Yes.

Q. Are those figures included in an official Government publication?

A. (No answer.)

Mr. Norman: Where did you get that Vallandingham Report, Mr. Creighton?

The Witness: That is in response to Senate Resolution 146.

Mr. Norman: That is a public document.

By Mr. Walker:

Q. Where did you get it? Did you get it from a publication?

A. I got it from the Commission.

Mr. Walker: That is all.

Mr. Kerr: I have a question or two for clarification puposes only.

Exam. Carter: Mr. Kerr.

By Mr. Kerr:

Q. Mr. Creighton, is it not true that in arriving at the average rate shown on page 4 of your exhibit, that you have arbitrarily transferred the Official territory tonnage

into Southern territory for the purpose of getting your assumed average rate, and likewise arbitrarily transferred the Southern tonnage into Official territory for the purpose of getting your average rate?

A. More precisely, Mr. Kerr, what I did was to redistribute the Official tonnage into the mileage blocks used [fol. 1318] in the Merchandise Report, based upon the proportions on which the Southern tonnage was distributed into those mileage blocks. On sheet 3 the reverse was done, that is to say, the Southern tonnage was put into the mileage blocks based upon the Official proportions.

Q. Did you have any tonnage record taken from the Merchandise Report or from any other report, that would indicate it was proper in your mind to make that arbitrary transfer of tonnage from one territory to another?

A. The redistribution, as I have stated, was of the figures taken from sheet 1, which is copied from the Merchandise Report, and that is all of the data I had for the purpose of making that redistribution.

Q. Assuming that the figures for the Official territory and for the Southern territory as shown in the Merchandise Report are correct—just assuming that for the purpose of this question—the first sheet of your Exhibit No. 74 shows the actual distribution of the Official territory tonnage according to mileage blocks?

A. It does, and it shows also the Southern tonnage in the same way.

Q. In each case you show the percentage distribution as between the mileage blocks?

A. That was shown in the Merchandise Report, yes.

Q. Yes.

[fol. 1319] A. And it is shown there.

Q. On sheet 2 what you have done in effect is to take the Official territory tonnage of 251,000,000 pounds plus shipments less than 10,000 pounds—I use those merely as an example—and you redistribute that using the Southern per cents?

A. That is correct.

Q. Is that right?

A. Yes.

Q. In that way you get an assumed rate?

A. First I got an assumed division of tonnage in those mileage blocks.

Q. But actually in Official territory 9.6 per cent of the tonnage of shipments less than 10,000 pounds was in the mileage block of less than 100 miles, is that not true?

A. In the Merchandise Report, yes, sir.

Q. But in getting your assumed rate in Official territory, you have used, or you have also assumed that 24.54 per cent of the Official territory tonnage moved less than 100 miles?

A. What per cent did you say?

Q. 24.54.

A. Yes.

Q. That is the Southern per cent.

A. Yes.

Q. You apply that to the Official tonnage?

[fol. 1320] A. That is right.

Q. And get an assumed rate in Official territory?

A. That is right.

Q. Is that correct?

A. Yes.

Q. And you carried that all the way through?

A. Yes.

Q. You did not find that in the Merchandise Report, did you?

A. No, sir.

Mr. Kerr: Thank you.

By Mr. Norman:

Q. In other words, you have re-rated the Official territory movement according to Southern rates and re-rated the Southern movement according to Official territory rates?

A. That is correct.

Mr. Norman: That is all.

Exam. Carter: Is there anything further?

Mr. Byars: One more question:

By Mr. Byars:

Q. What was the purpose of that showing, Mr. Creighton?

A. The purpose was to see what the average rate would be where we had figures that would, as nearly as we could get them, give for those rates an equal amount of transportation measured out in miles in the two territories.

Mr. Byars: That is all.

[fol. 1321] Exam. Carter: Mr. Widell.

Mr. Widell: I just have one question, to clarify a little pages 9 and 10 of your statement, beginning at the bottom of page 9, the last sentence, where you say: "By revising the class rate structure in the Eastern half of the United States so that the unjustified differences in first class rates will be gotten rid of", and so forth.

By Mr. Widell:

Q. Do you mean there the differences between the southern 13494 and the eastern 15879 scales?

A. That is what I had reference to, yes.

Q. Now, then, on the next page, page 10, you say that if that could be accomplished by applying the Eastern first class scale instead of the Southern in the south, "there will be no need for Southern carriers to resort to the establishment of innumerable commodity rates and classification exceptions in order to produce a basis which will permit the movement of class rated traffic, which the present basis of class rates does not permit". Now, does that mean that in Official territory where this Eastern scale applies, there are no innumerable commodity rates or classification exceptions? Just what did you mean by that?

A. It does not mean that there are not a great number of exceptions in Official Classification territory.

Q. Well, now, you know, do you not, Mr. Creighton, that in Official territory generally speaking we have about as many [fol. 1322] innumerable commodity rates and classification exceptions as we have in the south?

A. Probably so.

Mr. Widell: Thank you. That is all.

Exam. Carter: Are there any other questions of Mr. Creighton? (No response.) If not, you are excused.

(Witness excused.)

Exam. Carter: Call the next witness.

Mr. Norman: Mr. Mitchell.

Exam. Carter: Raise your right hand and be sworn.